

D-1

DEPARTMENT OF WATER RESOURCES (Expedited Rulemaking)

Title 12, Chapter 15, Article 7

Amend: R12-15-701, R12-15-704, R12-15-708, R12-15-710, R12-15-713,
R12-15-729



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 14, 2022

SUBJECT: Arizona Department of Water Resources

Amend: R12-15-701, R12-15-704, R12-15-708, R12-15-710,
R12-15-713, R12-15-729

Summary:

This expedited rulemaking from the Department of Water Resources relates to rules in Title 12, Chapter 15, Article 7 regarding Assured and Adequate Water Supply. In this expedited rulemaking the Department is proposing to amend the rules in response to their 5YRR proposed course of action, which was approved by the Council on June 1, 2021. In this expedited rulemaking the Department is amending the rules to be consistent with statute and recently passed legislation, and adding three new definitions.

The Department received approval from the rulemaking moratorium to initiate this rulemaking on May 20, 2021 and final approval to submit it to the Council on January 21, 2022.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes, the Department is amending the rules to implement without material change, courses of action proposed in the Department's 5YRR approved by the Council on June 1, 2022.

This expedited rulemaking qualifies under A.R.S. § 41-1027(A)(7) (. “Implements, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to section 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.”)

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

Yes. The Department cites both general and specific statutory authority for this rule.

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

No. This expedited rulemaking does not establish a new fee or contain a fee increase.

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

Yes, the Department indicates they received two written comments and properly responded to the comments.

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

No. The Department did not make any changes to the rule between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

Not applicable, there are no corresponding federal laws to the rules.

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

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

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

The Department did not review or rely on a study in conducting this expedited rulemaking.

9. **Conclusion**

In this expedited rulemaking, the Department seeks to amend rules to implement without material change, courses of action proposed in the Department's 5YRR approved by the Council on June 1, 2022. This expedited rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7). If approved, this expedited rulemaking would be effective immediately upon the Department filing the Notice of Final Expedited Rulemaking and Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



DOUGLAS A. DUCEY
Governor

THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES

1110 W. Washington, Suite 310
Phoenix, Arizona 85007
602.771.8500
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January 27, 2022

Sent via email to grrc@azdoa.gov

Governor's Regulatory Review Council
100 N. 15th Ave., Suite 402
Phoenix, AZ 85007

Re: Arizona Department of Water Resources Expedited Rule Package

Dear Governor's Regulatory Review Council:

Pursuant to A.A.C. R1-6-202(A), the Arizona Department of Water Resources ("ADWR") submits this final expedited rule package to the Council for placement on the Council Agenda. This rule package amends R12-15-701, R12-15-704, R12-15-708, R12-15-710, R12-15-713, and R12-15-729. This rulemaking implements courses of action described in ADWR's five-year rule review report. ADWR requests that these rules be placed on the agenda for the Council's April 5, 2022 meeting.

ADWR provides the following information regarding the rule package, as required by A.A.C. R1-6-202(A):

- a) The record for this rulemaking closed on December 23, 2021 at 5:00 p.m.
- b) All the amendments are justified under A.R.S. § 41-1027(A)(7) because they will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and they implement, without material change, courses of action proposed in the Department's Five-Year Rule Review Report approved by the Governor's Regulatory Review Council on June 1, 2021.
- c) The rulemaking activity relates to ADWR's five-year rule review report, which was approved by the Council on June 1, 2021.
- d) ADWR certifies that no study was relied on in ADWR's evaluation of or justification for the rule modification.
- e) Additionally, the following documents are included in this rule package as required by A.A.C. R1-6-202(A)(1)(e) in the following order:
 1. This cover letter.
 2. The Notice of Final Rulemaking required by A.A.C. R1-6-202, including the preamble, table of contents for the rulemaking, and text of each rule (**attachment A1**).

3. The written comments received by the agency concerning the rulemaking and the agency's responses to the comments (**attachment A2**).
4. A copy of the general and specific statutes authorizing the rule, including relevant statutory definitions (**attachment A3**).
5. A copy of the definitions of terms from statutes or other rules that are incorporated by reference in these rules (**attachment A4**).
6. A copy of the existing rules R12-15-701, R12-15-704, R12-15-708, R12-15-710, R12-15-713, and R12-15-729. (**attachment A5**).
7. Written approval for an exemption to the rulemaking moratorium from Chuck Podolak, Natural Resources Policy Advisor for Governor Ducey dated May 20, 2021(**attachment A6**).
8. Written final approval for an exemption to the rulemaking moratorium from Buchanan Davis, Natural Resources Policy Advisor for Governor Ducey dated January 21, 2022 (**attachment A7**).

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact Emily Petrick, ADWR Deputy Counsel, at (602) 771-8472.

Sincerely,



Thomas Buschatzke
Director

Enclosures: as listed

ATTACHMENT A1

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. ARIZONA DEPARTMENT OF WATER RESOURCES

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R12-15-701	Amend
R12-15-704	Amend
R12-15-708	Amend
R12-15-710	Amend
R12-15-713	Amend
R12-15-729	Amend

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

Authorizing statutes: A.R.S. §§ 45-105(B)(1), 45-576(H), and 45-576.09.

Implementing statutes: A.R.S. §§ 45-108.03, 45-576(H), 45-576.08, 45-579(A)(2), 45-579.01, and Laws 2021, chapter 272.

3. The effective date of the rule:

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: 27 A.A.R. Issue 50, dated December 10, 2021.

Notice of Proposed Expedited Rulemaking: 27 A.A.R. Issue 50, dated December 10, 2021.

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

Name: Emily Petrick, Deputy Counsel
Address: Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
Telephone: (602) 771-8472
Fax: (602) 771-8686

Email: Epetrick@azwater.gov
Website: www.new.azwater.gov

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

All amendments are justified under A.R.S. § 41-1027(A)(7) because they implement, without material change, courses of action proposed in the Department's Five-Year Rule Review Report approved by the Governor's Regulatory Review Council on June 1, 2021. Additionally, the amendments will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

The Department received written approval from the Governor's Office to make all the included rule amendments through an expedited rulemaking on May 20, 2021. The Department subsequently proposed making these rule amendments through an expedited rulemaking in a proposed course of action included in its Five-Year Rule Review Report submitted to the Governor's Regulatory Review Council. The Council approved the report, including the proposed course of action, on June 1, 2021. The Department received final written approval from the Governor's Office to make all the included rule amendments on January 21, 2022.

The following is an explanation of each rule amendment:

Assured and Adequate Water Supply Definitions R12-15-701

R12-15-701 is amended to add three definitions related to amendments to R12-15-704, R12-15-710, and R12-15-713. The additional definitions are for "gray water" and "gray water reuse system" related to the amendments to R12-15-705 and R12-15-710 and "mandatory adequacy jurisdiction" related to the amendment to R12-15-713.

Certificate of Assured Water Supply R12-15-704 and Designation of Assured Water Supply R12-15-710

To be consistent with A.R.S. § 45-576(H), R12-15-704 is amended to allow a reduction in the estimated water demand for a subdivision enrolled as a member land in the CAGR if gray water reuse systems will be installed in the subdivision. R12-15-710 is amended to allow a reduction in the estimated water demand if the designation applicant will serve customers who install gray water reuse systems. Unlike an applicant for a certificate of assured water supply, it is not a requirement that the designation applicant show membership in the CAGR for demand to be reduced because of gray water reuse systems. This distinction is required by A.R.S. § 45-576(H).

Additionally, A.R.S. § 45-576.08, added by SB 1274 (Fifty-fifth Legislature, First Regular Session, 2021) provides that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact for an application to modify a designation of assured water supply in the Pinal Active Management Area if certain criteria are met. R12-15-710 is amended to provide the criteria under which the Director shall not

review the physical availability of groundwater and stored water to be recovered outside the area of impact for applicants seeking to modify a designation of assured water supply. The rule applies to all Active Management Areas.

Material Plat Change R12-15-708

R12-15-708 is amended to be consistent with A.R.S. § 45-579.01, which was added by SB 1274 (Fifty-fifth Legislature, First Regular Session, 2021). A.R.S. § 45-579.01 provides that for the purpose of determining whether changes to a plat for which a certificate of assured water supply has been issued are material, the Director shall not consider any change in the number of housing units or lots if there is a reduction in the total demand for the subdivision. Additionally, R12-15-708 is amended to provide that an increase in the total number of housing units or lots constitutes a material plat change only if the water demand for the revised plat is equal to or greater than the water demand for the original plat.

Water Report R12-15-713

R12-15-713 is amended to provide criteria under which the Director will determine whether to grant an exemption from the adequate water supply requirements pursuant to A.R.S. § 45-108.03. The first change provides an exemption for proposed subdivisions where the municipal provider currently has an entitlement to Colorado River water, does not currently have the legal right to serve the water to the subdivision, but will have the legal right to serve Colorado River water to the subdivision within 20 years. The second change is to provide an application for an exemption for proposed subdivisions where the physical works for delivering water to the subdivision are not complete but are under construction and will be completed within 20 years.

Remedial Groundwater R12-15-729

R12-15-729 is amended to make it consistent with SB 1366 (Fifty-fifth Legislature, First Regular Session, 2021) by extending the end date for which use of remedial groundwater by a municipal provider under R12-15-729 will be deemed consistent with the management goal to January 1, 2050.

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

None.

8. A showing of good cause why the 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 statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2):

This rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement pursuant to A.R.S. § 41-1055(D)(3).

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

None.

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

There were no attendees at the oral proceeding held on December 23, 2021. The Department received two written comments during the comment period that ended at 5:00 p.m. on December 23, 2021. No changes to the rule amendments were made based on the comments received.

Entity/Individual	Summary of Comment	Department’s Response
Keith DeVore, the Town of Queen Creek	The comment proposed including new designation applications relying on issued physical availability demonstrations (“PADs”) in the physical availability exemption in proposed R12-15-710(G).	<p>The Department does not agree with this proposed change. Arizona Revised Statute (A.R.S.) § 45-576.08(A) expressly applies to “an application to modify a designation of assured water supply” and provides a physical availability exemption based on the total amount of groundwater and stored water recovered outside the area of impact included in the previously issued designation. The statute does not include a physical availability exemption based on the volume of groundwater included in any other type of previously issued assured water supply (AWS) determination, including a PAD. Further, A.R.S. § 45-576.09 only provides the Department with the authority to revise the AWS rules to apply A.R.S. § 45-576.08 to other active management areas outside of the Pinal Active Management Area, not to other types of AWS determinations such as a PAD. Lastly, A.R.S. § 45-576.08(A)(1)(b) provides that only the physical availability of the groundwater described in A.R.S. § 45-576.08 “shall not be grounds for an objection.” The Department does not have the authority to expand the exemption.</p> <p>A new designation applicant may rely on a PAD to demonstrate physical availability unless conditions</p>

		have changed since the PAD was issued. However, there is no statutory physical availability exemption for PAD groundwater and such a demonstration of physical availability may be grounds for an objection.
Warren Tenney, Arizona Municipal Water Users Association (AMWUA)	The comment expressed AMWUA's support for the rule amendments and encouraged the Department to continue to engage Phoenix Active Management Area stakeholders on further Assured Water Supply policy issues.	Thank you for submitting a comment on behalf of AMWUA supporting the proposed Assured Water Supply rule amendments. Your letter also encouraged the Department to continue to engage Phoenix Active Management Area stakeholders on further Assured Water Supply policy issues. The Department will continue to engage with stakeholders on these issues.

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 reason why a general permit is not used:

The rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to the rule amendments.

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

Federal law is not applicable to the subject of the rule.

c. Whether a person submitted an analysis that compares the rules' 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) and state where the text was changed between the emergency and the final rulemaking packages:

The rules were not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

- R12-15-701. Definitions – Assured and Adequate Water Supply Programs
- R12-15-704. Certificate of Assured Water Supply
- R12-15-708. Material Plat Change; Application for Review
- R12-15-710. Designation of Assured Water Supply
- R12-15-713. Water Report
- R12-15-729. Remedial Groundwater; Consistency with Management Goal

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-701. Definitions – Assured and Adequate Water Supply Programs

- 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
- 11. No change
- 12. No change
- 13. No change
- 14. No change

15. No change
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34. No change
35. No change
36. No change
37. No change

38. No change
39. No change
40. No change
41. No change
42. No change
43. "Gray water" has the same meaning as provided in A.R.S. § 49-201.
44. "Gray water reuse system" means a system constructed to reuse gray water that meets the requirements of the rules adopted by ADEQ for gray water systems.
4345. "Management plan" means a water management plan adopted by the Director pursuant to A.R.S. § 45-561 et seq.
46. "Mandatory adequacy jurisdiction" means a city, town, or county that requires an adequate water supply determination by the Director as a condition of approval of a plat pursuant to A.R.S. § 9-463.01(J) or (O) or A.R.S. § 11-823(A).
4447. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
4548. "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
4649. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
4750. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
4851. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
4952. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
5053. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
5154. "Owner" means:
- a. For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
 - b. For a designation applicant, the person who will be providing water service pursuant to the designation.

- ~~5255.~~ “Perennial” means a stream that flows continuously.
- ~~5356.~~ “Persons per household” means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
- ~~5457.~~ “Physical availability determination” means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
- ~~5558.~~ “Plat” means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
- ~~5659.~~ “Potential purchaser” means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
- ~~5760.~~ “Projected demand” means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider’s service area and reasonably anticipated expansions of the designated provider’s service area.
- ~~5861.~~ “Proposed municipal provider” means a municipal provider that has agreed to serve a proposed subdivision.
- ~~5962.~~ “Purchase agreement” means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.
- ~~6063.~~ “Remedial groundwater” means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
- ~~6164.~~ “Service area” means:
- a. For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider’s operating distribution system for the delivery of water for a non-irrigation use;
 - b. For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider’s operating distribution system for the delivery of water for a non-irrigation use; or
 - c. For an application for a certificate or designation of assured water supply, “service area” has the same meaning as prescribed in A.R.S. § 45-402.

- ~~6265.~~ “Subdivision” has the same meaning as prescribed in A.R.S. § 32-2101.
- ~~6366.~~ “Superfund site” means the site of a remedial action undertaken pursuant to CERCLA.
- ~~6467.~~ “Surface water” means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
- ~~6568.~~ “Water Quality Assurance Revolving Fund site” or “WQARF site” means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.
- ~~6669.~~ “Water report” means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

R12-15-704. Certificate of Assured Water Supply

- A.** No change
- B.** An applicant for a certificate shall submit an application on a form prescribed by the Director with the fee required by R12-15-103(C) and provide the following:
1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
 - a. For an applicant that is the current owner, one of the following:
 - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or
 - ii. Evidence that the CAGRDR has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application.
 - b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or
 - c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. If the subdivision is enrolled as a member land in the CAGRDR and the applicant proposes to install gray water reuse systems in the subdivision, sufficient information for the Director to determine the appropriate reduction in demand;
 - ~~4.~~ 5. A list of all proposed sources of water that will be used by the subdivision;
 - ~~5.~~ 6. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
 - ~~6.~~ 7. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C.** No change
- D.** No change
- E.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The estimated water demand of the subdivision. If the subdivision is enrolled in the CAGRDR and the applicant demonstrates that gray water reuse systems will be installed in the subdivision, the Director shall reduce the estimated water demand of the

subdivision by the volume the Director determines is likely to be saved through the gray water reuse systems;

2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.

F. No change

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

G. No change

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

H. No change

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
2. No change

I. No change

J. No change

1. No change
 - a. No change
 - b. No change
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K. No change

1. No change
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L. No change

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

- M. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change

R12-15-708. Material Plat Change; Application for Review

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:
 - 1. The 100-year water demand for the revised plat equals the 100-year water demand for the certificate or water report and The the number of lots on the plat has increased by more than:
 - a. For subdivisions of six to 10 lots: one lot;
 - b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
 - c. For subdivisions of 500 lots or more: 50 lots.
 - 2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate or water report, unless all of the following apply:
 - a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate or water report by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
 - b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
 - c. For a certificate, one of the following applies:
 - i. The subdivision is enrolled as a member land in the CAGRDR;
 - ii. Groundwater is not included as a source of supply; or
 - iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
 - d. The number of lots on the revised plat has not increased by more than:
 - i. For subdivisions of 6 to 10 lots: one lot;
 - ii. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
 - iii. For subdivisions of 500 or more: 50 lots.
 - 3. For a certificate, additional land is included in the plat, unless all of the following apply:
 - a. The land included in the original plat for which the certificate was issued is located in a master-planned community;

- b. The outer boundaries of the master-planned community have not expanded;
 - c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGR, the additional land has also been enrolled in the CAGR; and
 - d. A certificate has been issued for the additional land.
- D.** No change
- 1. No change
 - 2. No change
 - 3. No change
- E.** No change
- 1. No change
 - 2. No change
 - 3. No change

R12-15-710. Designation of Assured Water Supply

- A.** A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-103(C) and provide the following:
- 1. The applicant's current demand;
 - 2. The applicant's committed demand;
 - 3. The applicant's projected demand for the proposed term of the designation;
 - 4. If the applicant is seeking a reduction in the estimated water demand because gray water reuse systems will be installed, sufficient information for the Director to determine the appropriate reduction in demand;
 - 4. 5. The proposed term of the designation, which shall not be less than two years;
 - ~~5.~~ 6. Evidence that the criteria in subsection (E) of this Section are met; and
 - ~~6.~~ 7. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B.** No change
- 1. No change
 - 2. No change
- C.** The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578. For an application to modify a designation of assured water supply to which Subsection (G) of this Section applies, the physical availability of the groundwater and stored water to be recovered outside the area of impact of storage sought to be included in the designation shall not be grounds for an objection.
- D.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:
- 1. The annual volume of water physically, continuously, and legally available for at least 100 years
 - 2. The term of the designation, which shall not be less than two years;
 - 3. The applicant's estimated water demand. If the applicant demonstrates that gray water reuse systems will be installed, the Director shall reduce the estimated water demand for the subdivision by the volume the Director determines is likely to be saved through the gray water reuse systems;

4. The applicant's groundwater allowance; and
 5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.
- E.** The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716, except as provided in subsection (G) of this Section;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
 6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.
- F.** No change
- G.** For an application seeking to modify a designation of assured water supply, the Director shall not review the physical availability of the volume of groundwater and stored water to be recovered outside the area of impact sought to be included in the designation if the total volume of those sources sought to be included in the designation does not exceed the total volume of those sources included in the previous designation of assured water supply that are required to be accounted for pursuant to A.A.C. R12-15-716(B)(3)(c)(ii), minus the sum of the following:
1. The volume of groundwater withdrawn by the applicant since the previous designation of assured water supply order issuance date; and
 2. The volume of stored water recovered outside the area of impact by the applicant since the previous designation of assured water supply order issuance date.

R12-15-713. Water Report

- A.** No change
- B.** No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
- C.** No change
- D.** No change
 1. No change

- 2. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- F. No change
- G. No change
- H. No change
 - 1. No change
 - 2. No change
- I. No change
- J. No change
- K.** An owner of a subdivision that is located within a mandatory adequacy jurisdiction and that will be served Colorado River water by a municipal provider may apply for an exemption from the requirement to obtain an adequate water supply determination from the director or a commitment of water service from a designated provider pursuant to A.R.S. § 45-108.03(A)(1)(b) by submitting an application on a form prescribed by the Director and demonstrating that the criteria in subsection (K)(2) of this Section are met. Upon receiving an application pursuant to this subsection, the Director shall:
 - 1. Review the application pursuant to the licensing time frame provisions in R12-15-401.
 - 2. Determine whether the applicant has demonstrated that all of the following apply:
 - a. Sufficient supplies of water will not be legally available to meet the estimated water demand of the subdivision in a timely manner because the municipal provider will serve Colorado River water to the subdivision and the municipal provider does not currently have the legal right to serve the Colorado River water to the subdivision;
 - b. The municipal provider currently has an entitlement to Colorado River water, according to the criteria in R12-15-718(G);
 - c. The municipal provider will have the legal right to serve the Colorado River water to the subdivision within 20 years;
 - d. An interim water supply will be used to serve the subdivision until the municipal provider has the legal right to serve the Colorado River water to the subdivision and the interim water supply meets all of the criteria in subsection (E) of this Section, except that the supply will be available for the interim period and not for 100 years; and
 - e. When the municipal provider has the legal right to serve the Colorado River water to the subdivision, the Colorado River water supply will meet all of the criteria in subsection (E) of this Section.
 - 3. If the Director determines that the criteria of subsection (K)(2) are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the owner is exempt from the requirement to obtain an adequate water supply determination from the director or a commitment of water service from a designated provider.
- L.** An owner of a subdivision that is located within a mandatory adequacy jurisdiction and that will be served by a water supply project under construction may apply for an

exemption from the requirement to obtain an adequate water supply determination from the director or a commitment of water service from a designated provider pursuant to A.R.S. § 45-108.03(A)(1)(a) by submitting an application on a form prescribed by the Director and demonstrating that the criteria in subsection (L)(2) of this Section are met. Upon receiving an application pursuant to this subsection, the Director shall:

1. Review the application pursuant to the licensing time frame provisions in R12-15-401.
2. Determine whether the applicant has demonstrated that all of the following apply:
 - a. Sufficient supplies of water will not be available to meet the estimated water demand of the subdivision in a timely manner because the physical works for delivering water to the subdivision are not complete;
 - b. The physical works for delivering water to the subdivision are under construction and will be completed within 20 years;
 - c. An interim water supply will be used to serve the subdivision until the physical works for delivering water to the subdivision are fully constructed and the interim water supply meets all of the criteria in subsection (E) of this Section, except that supply will be available for the interim period and not for 100 years; and
 - d. When the physical works for delivering water to the subdivision are fully constructed, the water supply will meet all of the criteria in subsection (E) of this Section.
3. If the Director determines that the criteria of subsection (L)(2) of this Section are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the owner is exempt from the requirement to obtain an adequate water supply determination from the director or a commitment of water service from a designated provider.

R12-15-729. Remedial Groundwater; Consistency with Management Goal

- A.** Use of remedial groundwater by a municipal provider before January 1, ~~2025~~ 2050, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:
 1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
 2. The municipal provider complies with the metering and reporting requirements in subsection (K) of this Section.
- B.** No change
- C.** No change
- D.** No change
 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
- E.** No change
1. No change
 2. No change
 3. No change
- F.** The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, ~~2025~~ 2050. If the Director approves a municipal provider's application, the Director shall calculate the amount of remedial groundwater use that is consistent with the management goal of the AMA as follows:
1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.
 2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.
 3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
 4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
- G.** If the Director determines that remedial groundwater use by a municipal provider is consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, ~~2025~~ 2050.
- H.** If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the

management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:

1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
 2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, ~~2025~~ 2050.
- I.** No change
1. No change
 2. No change
 3. No change
 4. No change
 - a. No change
 - b. No change
 5. No change
- J.** Until January 1, ~~2025~~ 2050, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
 2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
 - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
 - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
 - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;

- d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
- e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
- f. The name and telephone number of a person the Department may contact regarding the exemption.

K. No change

ATTACHMENT A2



Sharon Scantlebury <sscantlebury@azwater.gov>

Town of Queen Creek AWS Rule Change Recommendation

1 message

Keith DeVore <keith.devore@queencreekaz.gov>

Thu, Dec 16, 2021 at 12:49 PM

To: sscantlebury@azwater.gov

Cc: Paul Gardner <paul.gardner@queencreekaz.gov>, Marc Skocypec <marc.skocypec@queencreekaz.gov>, Doug Toy <doug.toy@queencreekaz.gov>

Hello Ms. Scantelbury,

Thank you and the entire ADWR department for allowing us to offer our feedback on the recent rule changes for assured and adequate water supply rules.

The Town of Queen Creek staff has vetted these changes and everything seems good to us except for one item.

The new language states:

ARS 45-576-08, added by SB1274 provides that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact for an application to modify a designation of assured water supply in the Pinal Active Management Area if certain criteria.

The department is proposing to amend R12-15-710 to provide the criteria under which the Director will not review the physical availability of groundwater and stored water to be recovered outside the area of impact for applicants seeking to modify a designation of assured water supply. The rule will apply to all Active Management Areas.

*Our recommendation is that this rule will also apply to **NEW** assured water supply applications. Since a new DAWS application does not have an existing approved DAWS. We suggest using the most recently ADWR approved Physical Availability Determination (PAD) minus the committed PAD demands. The proposed language suggests this change would only take place with **MODIFIED DAWS** application and the Town of Queen Creek recommends this rule also apply to new applicants.*

Thank you Sharon, please let me know if you need anything else from me or from the Town.

Be well,

--

Keith DeVore

Water Resources Manager

t: (847)610-4821

e: keith.devore@queencreekaz.gov

19715 S 220th St, Queen Creek, AZ 85142

Office hours: Monday – Thursday, 7 a.m. – 6 p.m., closed on Fridays



TOWN OF
QUEEN CREEK
ARIZONA

Emails generated by council members, members of Town commissions and committees and by staff and that pertain to Town business are public records. These emails are preserved as required by law and generally are available for public inspection. Email correspondence is regularly reviewed by members of the public, media outlets and reporters. To ensure compliance with the Open Meeting Law, members of the Town Council, Commissions and Committees should not forward or copy e-mail correspondence to other members of the Council, boards or commissions and should not use reply all when responding to this message. Any questions should be directed to the Town Attorney: (602) 285-5000.



DOUGLAS A. DUCEY
Governor

THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES

1110 West Washington Street, Suite 310
Phoenix, Arizona 85007
602.771.8500
azwater.gov

January 27, 2022

Keith DeVore
Town of Queen Creek
19715 S 220th St
Queen Creek, AZ 85142
keith.devore@queencreekaz.gov

Re: Town of Queen Creek AWS Rule Change Recommendation

Dear Mr. DeVore:

Thank you for submitting a comment on the proposed amendments to the Assured and Adequate Water Supply Rules. The comment proposed including new designation applications relying on issued physical availability demonstrations (“PADs”) in the physical availability exemption in proposed R12-15-710(G).

The Arizona Department of Water Resources (Department) does not agree with this proposed change. Arizona Revised Statute (A.R.S.) § 45-576.08(A) expressly applies to “an application to modify a designation of assured water supply” and provides a physical availability exemption based on the total amount of groundwater and stored water recovered outside the area of impact included in the previously issued designation. The statute does not include a physical availability exemption based on the volume of groundwater included in any other type of previously issued assured water supply (AWS) determination, including a PAD. Further, A.R.S. § 45-576.09 only provides the Department with the authority to revise the AWS rules to apply A.R.S. § 45-576.08 to other active management areas outside of the Pinal Active Management Area, not to other types of AWS determinations such as a PAD. Lastly, A.R.S. § 45-576.08(A)(1)(b) provides that only the physical availability of the groundwater described in A.R.S. § 45-576.08 “shall not be grounds for an objection.” The Department does not have the authority to expand the exemption.

A new designation applicant may rely on a PAD to demonstrate physical availability unless conditions have changed since the PAD was issued. However, there is no statutory physical availability exemption for PAD groundwater and such a demonstration of physical availability may be grounds for an objection.

January 27, 2022

Page 2 of 2

Thank you again for your comment on the proposed rule amendments. The Department will post the Notice of Final Rulemaking on its website after it is filed with the Governor's Regulatory Review Council. The Notice of Final Rulemaking will include the Department's responses to all public comments received.

Please feel free to contact me with any questions or concerns.

Sincerely,

David L. McKay

David L. McKay, Manager
Recharge, Assured and Adequate Water Supply

Cc: *Via electronic mail*
Paul Garnder, Town of Queen Creek
Marc Skocytec, Town of Queen Creek
Doug Toy, Town of Queen Creek



December 17 2021

Via e-mail: sscantlebury@azwater.gov

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington St., Suite 310
Phoenix, Arizona 85007

Re: Notice of Proposed Expedited Rulemaking for Assured and Adequate Water Supply Rules

The Arizona Municipal Water Users Association (AMWUA) supports the proposed Rulemaking, specifically the amendments to R12-14-710, which are consistent with A.R.S. §§ 45-576.08 and 45-576.09 as enacted by Senate Bill 1274 (55th Legislature, First regular Session, 2021).

The amendments to R12-14-710 provide an important protection for Designated providers that have previously demonstrated physical availability of groundwater and stored water recovered outside the Area of Impact. Importantly, the AMWUA cities and many other Designated providers have secured renewable resources and invested significantly to utilize those supplies in order to meet Assured Water Supply requirements, and these amendments would help safeguard the groundwater supplies that are the backstop of many municipal water supply portfolios. They also provide a measure of parity with Certificates of Assured Water Supply that are not reevaluated by ADWR, while still adjusting groundwater volumes within a Designation based on real world water use.

AMWUA considers this Rulemaking as one step in a series of ongoing necessary efforts to address evolving issues with groundwater physical availability and the AWS Program. We encourage ADWR to continue to engage Phoenix AMA stakeholders on further policy efforts, including:

- Tightening the conditions for extensions of Analyses of Assured Water Supply;
- Instituting a priority system that allows Designated providers to remove “junior” Analyses in future groundwater model runs as proposed in the 2019 Draft Substantive Policy Statement ([see AMWUA’s June 26, 2020 comments](#));
- Keeping stakeholders apprised on the development of the Department’s “Phoenix” groundwater model update as we prepare our applications to modify our designations; and,
- Publishing the results of the current Assured Water Supply projection using the relevant Phoenix AMA groundwater model(s) at least every five years so stakeholders, decision makers, and the public better understand the AMA’s groundwater conditions.
- Continuing to work to address residual, unreplenished groundwater withdrawals that reduce physical availability of groundwater supplies that existing water providers rely upon, including

Arizona Municipal Water Users Association

the significant volumes of groundwater withdrawals attributed to undesignated water providers serving un-subdivided parcels and other exempted uses.

AMWUA appreciates ADWR's initiative and effort to pursue this expedited Rulemaking, specifically the amendment to R12-14-710. The Assured Water Supply Program is vitally important to groundwater management in the Phoenix AMA as well as a critical foundation of consumer protection that is necessary for Arizona's economy to thrive. We continue to support efforts to protect and enhance this program.

Sincerely,



Warren Tenney
Executive Director

Arizona Municipal Water Users Association

DOUGLAS A. DUCEY
Governor



THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES

1110 West Washington Street, Suite 310
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January 27, 2022

Warren Tenney
Arizona Municipal Water Users Association
3003 N. Central Avenue, Suite 1550
Phoenix, Arizona 85012
wtenney@amwua.org

Re: Notice of Proposed Expedited Rulemaking for Assured and Adequate Water Supply Rules

Dear Mr. Tenney:

Thank you for submitting a comment on behalf of Arizona Municipal Water Users Association (AMWUA) supporting the proposed Assured Water Supply (AWS) rule amendments. Your letter also encouraged the Department to continue to engage Phoenix Active Management Area stakeholders on further AWS policy issues. The Department will continue to engage with stakeholders on these issues.

The Department will post the Notice of Final Rulemaking on its website after it is filed with the Governor's Regulatory Review Council. The Notice of Final Rulemaking will include the Department's responses to all public comments received.

Please feel free to contact me with any questions or concerns.

Sincerely,

David L McKay

David L. McKay, Manager
Recharge, Assured and Adequate Water Supply

ATTACHMENT A3

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.
8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; Laws 1990, Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch.

156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

End of Document

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Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-108.03

§ 45-108.03. Exemption from adequate water supply requirements for city, town or county based on an adequate water supply within twenty years; criteria; application

Effective: October 1, 2011

Currentness

A. If a proposed subdivision is located in a city, town or county that requires an adequate water supply determination by the director as a condition of approval of the plat pursuant to [§ 9-463.01, subsection J](#) or [O](#) or [§ 11-823, subsection A](#), the subdivider may apply to the director for an exemption from the requirement pursuant to this section on a form prescribed by the director. The director shall grant the exemption if the subdivider demonstrates to the satisfaction of the director that the subdivision will be served by a water supply project to which both of the following apply:

1. The subdivider has demonstrated financial capability pursuant to [§ 45-108, subsection I](#), but the water supply project will not be capable of serving the subdivision with sufficient water to meet its demands in a timely manner because of one of the following:

(a) The physical works for delivering water to the subdivision are not complete but are under construction and will be completed within twenty years.

(b) The subdivision will be served Colorado river water by a water provider that does not currently have the legal right to serve the water to the subdivision, but the water provider has an existing permanent contract for the Colorado river water and will have the legal right to serve the water to the subdivision within twenty years.

2. The subdivision will have an adequate water supply when the construction of the physical works is completed or the water supply is legally available to serve the subdivision, whichever applies, and the interim water supply that will serve the subdivision meets all of the criteria for an adequate water supply under [§ 45-108](#) except that the interim water supply will not be available for one hundred years.

B. [Section 45-114, subsections A](#) and [B](#) govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

Credits

Added by [Laws 2007, Ch. 240, § 9](#). Amended by [Laws 2010, Ch. 244, § 35](#), eff. Oct. 1, 2011.

A. R. S. § 45-108.03, AZ ST § 45-108.03

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 9. Management (Refs & Annos)

A.R.S. § 45-576

§ 45-576. Certificate of assured water supply; designated cities,
towns and private water companies; exemptions; definition

Effective: August 9, 2017

Currentness

A. Except as provided in subsections G and J of this section, a person who proposes to offer subdivided lands, as defined in § 32-2101, for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director prior to presenting the plat for approval to the city, town or county in which the land is located, where such is required, and prior to filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to § 32-2181, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

B. Except as provided in subsections G and J of this section, a city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

C. Except as provided in subsections G and J of this section, the state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only on compliance with either of the following:

1. The subdivider, owner or agent has paid any activation fee required under § 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under § 48-3774.01, subsection A, paragraph 2 and has obtained a certificate of assured water supply from the director.

2. The subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section and the subdivider, owner or agent has paid any activation fee required under § 48-3772, subsection A, paragraph 7.

D. The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

E. The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

F. The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4,¹ the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22² and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city, town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to §§ 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section. On or before January 1, 2008, the rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system will be installed that meets the requirements of the rules adopted by the department of environmental quality for gray water systems and if the application is for a certificate of assured water supply, the land for which the certificate is sought must qualify as a member land in a conservation district pursuant to title 48, chapter 22, article 4. For the purposes of this subsection, "gray water" has the same meaning prescribed in § 49-201.

I. If the director designates a municipal provider as having an assured water supply under this section and the designation lapses or otherwise terminates while the municipal provider's service area is a member service area of a conservation district, the municipal provider or its successor shall continue to comply with the consistency with management goal requirements in the rules adopted by the director under subsection H of this section as if the designation was still in effect with respect to the municipal provider's designation uses. When determining compliance by the municipal provider or its successor with the consistency with management goal requirements in the rules, the director shall consider only water delivered by the municipal provider or its successor to the municipal provider's designation uses. A person is the successor of a municipal provider if the person commences water service to uses that were previously designation uses of the municipal provider. Any groundwater

delivered by the municipal provider or its successor to the municipal provider's designation uses in excess of the amount allowed under the consistency with management goal requirements in the rules shall be considered excess groundwater for purposes of title 48, chapter 22. For the purposes of this subsection, "designation uses" means all water uses served by a municipal provider on the date the municipal provider's designation of assured water supply lapses or otherwise terminates and all recorded lots within the municipal provider's service area that were not being served by the municipal provider on that date but that received final plat approval from a city, town or county on or before that date. Designation uses do not include industrial uses served by an irrigation district under § 45-497.

J. Subsections A, B and C of this section do not apply to a person who proposes to offer subdivided land for sale or lease in an active management area if all the following apply:

1. The director issued a certificate of assured water supply for the land to a previous owner of the land and the certificate was classified as a type A certificate under rules adopted by the director pursuant to subsection H of this section.
2. The director has not revoked the certificate of assured water supply described in paragraph 1 of this subsection, and proceedings to revoke the certificate are not pending before the department or a court. The department shall post on its website a list of all certificates of assured water supply that have been revoked or for which proceedings are pending before the department or a court.
3. The plat submitted to the department in the application for the certificate of assured water supply described in paragraph 1 of this subsection has not changed.
4. Water service is currently available to each lot within the subdivided land and the water provider listed on the certificate of assured water supply described in paragraph 1 of this subsection has not changed.
5. The subdivided land qualifies as a member land under title 48, chapter 22 and the subdivider has paid any activation fee required under § 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under § 48-3774.01, subsection A, paragraph 2.
6. The plat is submitted for approval to a city, town or county that is listed on the department's website as a qualified platting authority.

K. Subsection J of this section does not affect the assignment of a certificate of assured water supply as prescribed by § 45-579.

L. For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to § 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for the purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of

one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by § 9-463.01, 11-823 or 32-2181 to satisfy this requirement.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 17, eff. April 22, 1981; Laws 1982, Ch. 191, § 22, eff. April 22, 1982; Laws 1984, Ch. 103, § 8; Laws 1989, Ch. 230, § 61; Laws 1991, Ch. 112, § 5; Laws 1991, Ch. 211, § 20; Laws 1993, Ch. 200, § 11; Laws 1994, Ch. 203, § 23, eff. April 19, 1994; Laws 1994, Ch. 278, § 7; Laws 1994, Ch. 291, § 21; Laws 1996, Ch. 103, § 9, eff. April 9, 1996; Laws 2003, Ch. 155, § 1; Laws 2004, Ch. 318, § 4; Laws 2005, Ch. 198, § 7; Laws 2006, Ch. 228, § 1; Laws 2010, Ch. 244, § 37, eff. Oct. 1, 2011; Laws 2017, Ch. 298, § 1.

Notes of Decisions (5)

Footnotes

1 Section 48-3771 et seq.

2 Section 48-3701 et seq.

A. R. S. § 45-576, AZ ST § 45-576

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)



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Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 9. Management (Refs & Annos)

A.R.S. § 45-576.08

§ 45-576.08. Pinal active management area; assured
water supply; physical availability; definitions

Effective: September 29, 2021

[Currentness](#)

A. All of the following apply in the Pinal active management area for an application to modify a designation of assured water supply:

1. If the total volume of groundwater and stored water to be recovered outside the area of impact of storage sought to be included in the designation does not exceed the total volume of those sources of water included in the previous designation minus the sum of the volume of groundwater actually withdrawn and the volume of stored water recovered outside the area of impact of storage by the applicant since issuance of the previous designation order:

(a) The director shall not review the physical availability of the groundwater and stored water to be recovered outside of the area of impact of storage sought to be included in the designation.

(b) The physical availability of the groundwater and stored water to be recovered outside the area of impact of storage sought to be included in the designation shall not be grounds for an objection.

2. Paragraph 1 of this subsection shall not affect the director's review of assured water supply criteria other than the physical availability of groundwater and stored water to be recovered outside the area of impact of storage.

3. Both of the following are deemed physically available for purposes of an assured water supply designation:

(a) Stored water that is to be recovered by the applicant within the area of impact of storage pursuant to existing long-term storage credits pledged to the designation of assured water supply.

(b) Stored water that is to be recovered by the applicant within the area of impact of storage either on an annual basis pursuant to [§ 45-851.01](#) or as long-term storage credits to be earned in the future if the water to be stored meets the physical availability requirements for the water supply under rules adopted pursuant to [§ 45-576, subsection H](#).

B. For the purposes of this section:

1. “Area of impact of storage” means any of the following:

(a) Within one mile of an existing or proposed underground storage facility where the water to be recovered is or will be stored.

(b) Within the district boundaries of an irrigation district that has a permit for a groundwater savings facility and where the water to be recovered is or will be stored.

(c) An area not described in subdivision (a) or (b) of this paragraph that has been shown to have been positively impacted by the storage of the water to be recovered as demonstrated by a hydrologic model approved by the director.

2. “Long-term storage credit” has the same meaning prescribed in § 45-802.01.

3. “Stored water” has the same meaning prescribed in § 45-802.01.

Credits

Added by [Laws 2021, Ch. 17, § 1](#).

A. R. S. § 45-576.08, AZ ST § 45-576.08

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 9. Management (Refs & Annos)

A.R.S. § 45-576.09

§ 45-576.09. Active management areas; director's
authority to change assured water supply rules

Effective: September 29, 2021

[Currentness](#)

Notwithstanding any other law, the director may revise the rules adopted pursuant to § 45-576, subsection H to apply § 45-576.08 to other active management areas.

Credits

Added by [Laws 2021, Ch. 17, § 1.](#)

A. R. S. § 45-576.09, AZ ST § 45-576.09

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 9. Management (Refs & Annos)

A.R.S. § 45-579

§ 45-579. Assignment of certificate of assured water supply; definition

Effective: September 29, 2021

[Currentness](#)

A. A holder of a certificate of assured water supply issued pursuant to § 45-576 may assign the certificate, in whole or in part, to another person if the holder applies to the director for approval within ten years after the original certificate was issued and the director approves the application. An application may be filed under this section more than ten years after the original certificate was issued if a minimum of five hundred lots within the subdivision covered by the certificate have been sold to individual home buyers by the holder of the certificate and any previous holders of the certificate. An application filed under this section shall be on a form prescribed by the director. The director shall approve a timely application for assignment of a certificate of assured water supply if the director determines that all of the following apply:

1. The proposed assignee owns or is acquiring the subdivision to which the current certificate applies, or if the application is for a partial assignment, the portion of the subdivision to which the current certificate applies that is the subject of the proposed assignment.
2. There has not been any material change in the subdivision plat, plan or map since the certificate was originally issued, including an increase in the total water demand for the subdivision, including all assignments. For the purpose of this paragraph, a change in the total number of housing units or lots does not constitute a material change in a subdivision plat, plan or map if there is a reduction in the total water demand for the subdivision.
3. Either there is water delivery infrastructure in place that is capable of delivering water to each lot within the subdivision or the proposed assignee has demonstrated financial capability to complete the infrastructure. In determining whether the proposed assignee has demonstrated financial capability to complete the infrastructure, the director shall apply the same standards that are used in evaluating financial capability for a new certificate application.
4. The water provider serving the subdivision and the source of supply have not changed since the current certificate was issued and the water provider has agreed to serve the subdivision after the assignment.
5. Water rights, permits, licenses, contracts and easements other than the municipal provider's service area rights at the time the current certificate was issued have been assigned and may be used to support water service to the portion of the subdivision that is the subject of the assignment and to any remaining portions of the subdivision that are retained by the subdivider.

6. There has not been any change in the manner in which the consistency with management goal requirements were satisfied at the time the original certificate was issued.

B. After a change of ownership has occurred and on approval of an assignment, the director shall issue a certificate of assured water supply in the name of the assignee, retaining the date of the original certificate as the date of issuance.

C. In the case of a partial assignment, the director shall issue a certificate in the name of the assignee for the portion of the subdivision that is the subject of the proposed assignment, and shall issue a certificate in the name of the assignor for the portion of the subdivision retained, each with the date of the original certificate as the date of issuance. The new certificates shall include all water demand for the subdivision represented by the current certificate. The allocation of demand between the certificates shall be based on a reasonable plan for allocation of the total subdivision demand as approved by the director.

D. [Section 45-578](#) does not apply to an application filed under this section. [Section 45-114](#), [subsections A](#) and [B](#) govern administrative proceedings, rehearing and review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

E. Within two business days after receiving an application under subsection A of this section, the director shall post notice of the application on the department's website until the director issues a decision on the application. The notice shall include notice of the right to submit comments on the application as provided in this subsection, including a toll free number where comments may be submitted by telephone and the addresses where comments may be submitted by United States mail, electronic mail and hand delivery. Any person may submit comments on the application within fourteen calendar days after the first day that notice of the application is posted on the department's website. The director shall consider all timely comments submitted on the application before issuing a decision on the application. Within two business days after issuing a decision on the application, the director shall post notice of the decision on the department's website for a minimum of fourteen days. Notwithstanding title 41, chapter 6, article 10¹ and [§ 45-114](#), a person who submits comments on an application pursuant to this subsection is not a party for purposes of title 41, chapter 6, article 10, is not entitled to an administrative hearing before or after the director's decision on the application and is not entitled to judicial review of the director's decision.

F. For the purposes of this section, "original certificate" means the initial certificate of assured water supply that is issued by the director for a subdivision.

Credits

Added by [Laws 2004, Ch. 238, § 1, eff. May 17, 2004](#). Amended by [Laws 2021, Ch. 17, § 2](#).

Footnotes

¹ Section 41-1092 et seq.

A. R. S. § 45-579, AZ ST § 45-579

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 9. Management (Refs & Annos)

A.R.S. § 45-579.01

§ 45-579.01. Certificate of assured water supply; material change; plat

Effective: September 29, 2021

[Currentness](#)

For the purpose of determining whether changes to a plat for which a certificate has been issued in an active management area are material under rules adopted pursuant to [§ 45-576, subsection H](#), the director shall not consider any change in the number of housing units or lots if there is a reduction in the total water demand for the subdivision.

Credits

Added by [Laws 2021, Ch. 17, § 3](#).

A. R. S. § 45-579.01, AZ ST § 45-579.01

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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House Engrossed Senate Bill

~~remediated water; groundwater; use~~
(now: remediated groundwater use; date; extension)

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 272
SENATE BILL 1366

AN ACT

AMENDING LAWS 1997, CHAPTER 287, SECTION 52, AS AMENDED BY LAWS 1999,
CHAPTER 295, SECTION 50; RELATING TO WATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Laws 1997, chapter 287, section 52, as amended by Laws
3 1999, chapter 295, section 50, is amended to read:

4 Sec. 52. Amendment of assured water supply rules; definition

5 A. For each calendar year until ~~2025~~ 2050, the use of up to an
6 aggregate of sixty-five thousand acre-feet of groundwater withdrawn within
7 all active management areas pursuant to approved remedial action projects
8 under CERCLA or title 49, Arizona Revised Statutes, except for groundwater
9 withdrawn to provide an alternative water supply pursuant to section
10 49-282.03, Arizona Revised Statutes, shall be considered consistent with
11 the management goal of the active management area as prescribed in section
12 45-576, subsection ~~I~~ L, paragraph 2, Arizona Revised Statutes.

13 B. The use of an amount of groundwater withdrawn pursuant to
14 approved remedial action projects under CERCLA or title 49, Arizona
15 Revised Statutes, except for groundwater withdrawn to provide an
16 alternative water supply pursuant to section 49-282.03, Arizona Revised
17 Statutes, in excess of the aggregate volume of sixty-five thousand acre-
18 feet of groundwater authorized in subsections A and C of this section
19 shall be considered consistent with the management goal of the active
20 management area as prescribed in section 45-576, subsection ~~I~~ L,
21 paragraph 2, Arizona Revised Statutes, in the following amounts:

22 1. If the groundwater is withdrawn in the second management
23 period, seventy-five ~~per cent~~ PERCENT of the total volume withdrawn in
24 excess of the aggregate volume of sixty-five thousand acre-feet of
25 groundwater authorized in subsections A and C of this section.

26 2. If the groundwater is withdrawn in the third management period,
27 fifty ~~per cent~~ PERCENT of the total volume withdrawn in excess of the
28 aggregate volume of sixty-five thousand acre-feet of groundwater
29 authorized in subsections A and C of this section.

30 3. If the groundwater is withdrawn in the fourth management period,
31 twenty-five ~~per cent~~ PERCENT of the total volume withdrawn in excess of
32 the aggregate volume of sixty-five thousand acre-feet of groundwater
33 authorized in subsections A and C of this section.

34 4. If the groundwater is withdrawn in the fifth management period,
35 ten ~~per cent~~ PERCENT of the total volume withdrawn in excess of the
36 aggregate volume of sixty-five thousand acre-feet of groundwater
37 authorized in subsections A and C of this section.

38 5. If the groundwater is withdrawn after 2025, zero ~~per cent~~
39 PERCENT of the total volume withdrawn in excess of the aggregate volume of
40 sixty-five thousand acre-feet of groundwater authorized in subsections A
41 and C of this section.

42 C. A municipal water provider ~~who~~ THAT proposes to use groundwater
43 withdrawn pursuant to an approved remedial action project under CERCLA or
44 title 49, Arizona Revised Statutes, and ~~who~~ THAT wishes to have the
45 director of water resources determine that the use of some or all of the

1 municipal provider's projected groundwater withdrawals are consistent with
2 the management goal pursuant to subsection A or B of this section shall
3 apply for this determination ~~prior to~~ BEFORE January 1, 2010. The amount
4 of groundwater for which the use is determined to be consistent with the
5 management goal pursuant to this section shall not exceed the amount that
6 the municipal provider is legally obligated to withdraw or use and shall
7 not extend beyond ~~2025~~ 2050. The aggregate volume authorized by the
8 director pursuant to subsection A of this section shall not exceed
9 sixty-five thousand acre-feet in any calendar year.

10 D. Not later than January 1, 2001, the director of water resources
11 shall amend the rules adopted pursuant to section 45-576, subsection H,
12 Arizona Revised Statutes, to carry out the purpose of this section. ~~Prior~~
13 ~~to~~ BEFORE the amendment of these rules, the director of water resources
14 shall treat any groundwater withdrawn pursuant to an approved remedial
15 action project under CERCLA or title 49, Arizona Revised Statutes, as
16 consistent with the management goal as provided in subsections A, B and C
17 of this section.

18 E. For annual remediated groundwater withdrawals of 250 acre-feet
19 or less that are withdrawn pursuant to an approved remedial action under
20 CERCLA, the water quality assurance revolving fund program or other
21 applicable federal or state law, except for groundwater withdrawn to
22 provide an alternative water supply pursuant to section 49-282.03, Arizona
23 Revised Statutes, the amount of groundwater withdrawn shall not be debited
24 against the water provider's assured water supply mined groundwater
25 account and shall not be subject to a replenishment obligation. An annual
26 user of 250 acre-feet or less of remediated groundwater shall notify the
27 department of water resources of compliance with the exemption and these
28 uses shall not apply in calculating the 65,000 acre-feet per year total
29 prescribed by subsection A of this section.

30 F. For THE purposes of this section, "CERCLA" has the same meaning
31 prescribed in section 49-201, Arizona Revised Statutes.

APPROVED BY THE GOVERNOR APRIL 20, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2021.

ATTACHMENT A4

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 2. Water Quality Control (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

A.R.S. § 49-201

§ 49-201. Definitions

Effective: September 29, 2021

[Currentness](#)

In this chapter, unless the context otherwise requires:

1. “Administrator” means the administrator of the United States environmental protection agency.
2. “Aquifer” means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.
3. “Best management practices” means those methods, measures or practices to prevent or reduce discharges and includes structural and nonstructural controls and operation and maintenance procedures. Best management practices may be applied before, during and after discharges to reduce or eliminate the introduction of pollutants into receiving waters. Economic, institutional and technical factors shall be considered in developing best management practices.
4. “CERCLA” means the comprehensive environmental response, compensation, and liability act of 1980, as amended ([P.L. 96-510](#); 94 Stat. 2767; [42 United States Code §§ 9601 through 9657](#)), commonly known as “superfund”.
5. “Clean closure” means implementation of all actions specified in an aquifer protection permit, if any, as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards at the applicable point of compliance or, if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in [§ 49-243, subsection B](#), paragraph 3. Clean closure also means postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.
6. “Clean water act” means the federal water pollution control act amendments of 1972 ([P.L. 92-500](#); 86 Stat. 816; [33 United States Code §§ 1251 through 1376](#)), as amended.
7. “Closed facility” means:
 - (a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation.

(b) A facility that has been approved as a clean closure by the director.

(c) A facility at which any postclosure monitoring and maintenance plan, notifications and approvals required in a permit have been completed.

8. “Concentrated animal feeding operation” means an animal feeding operation that meets the criteria prescribed in [40 Code of Federal Regulations part 122, appendix B](#) for determining a concentrated animal feeding operation for purposes of [40 Code of Federal Regulations §§ 122.23 and 122.24, appendix C](#).

9. “Department” means the department of environmental quality.

10. “Direct reuse” means the beneficial use of reclaimed water for specific purposes authorized pursuant to [§ 49-203, subsection A, paragraph 7](#).

11. “Director” means the director of environmental quality or the director's designee.

12. “Discharge” means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter,¹ discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

13. “Discharge impact area” means the potential areal extent of pollutant migration, as projected on the land surface, as the result of a discharge from a facility.

14. “Discharge limitation” means any restriction, prohibition, limitation or criteria established by the director, through a rule, permit or order, on quantities, rates, concentrations, combinations, toxicity and characteristics of pollutants.

15. “Effluent-dependent water” means a surface water or portion of a surface water that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.

16. “Environment” means WOTUS, any other surface waters, groundwater, drinking water supply, land surface or subsurface strata or ambient air, within or bordering on this state.

17. “Ephemeral water” means a surface water or portion of surface water that flows or pools only in direct response to precipitation.

18. “Existing facility” means a facility on which construction began before August 13, 1986 and that is neither a new facility nor a closed facility. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin, as part of a continuous on-site construction program any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

19. “Facility” means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

20. “Gray water” means 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.

21. “Hazardous substance” means:

(a) Any substance designated pursuant to §§ 311(b)(2)(A) and 307(a) of the clean water act.

(b) Any element, compound, mixture, solution or substance designated pursuant to § 102 of CERCLA.

(c) Any hazardous waste having the characteristics identified under or listed pursuant to § 49-922.

(d) Any hazardous air pollutant listed under § 112 of the federal clean air act ([42 United States Code § 7412](#)).

(e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to § 7 of the federal toxic substances control act ([15 United States Code § 2606](#)).

(f) Any substance that the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

22. “Inert material” means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards

established pursuant to § 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

23. “Intermittent water” means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.

24. “Major modification” means a physical change in an existing facility or a change in its method of operation that results in a significant increase or adverse alteration in the characteristics or volume of the pollutants discharged, or the addition of a process or major piece of production equipment, building or structure that is physically separated from the existing operation and that causes a discharge, provided that:

(a) A modification to a groundwater protection permit facility as defined in § 49-241.01, subsection C that would qualify for an area-wide permit pursuant to § 49-243 consisting of an activity or structure listed in § 49-241, subsection B shall not constitute a major modification solely because of that listing.

(b) For a groundwater protection permit facility as defined in § 49-241.01, subsection C, a physical expansion that is accomplished by lateral accretion or upward expansion within the pollutant management area of the existing facility or group of facilities shall not constitute a major modification if the accretion or expansion is accomplished through sound engineering practice in a manner compatible with existing facility design, taking into account safety, stability and risk of environmental release. For a facility described in § 49-241.01, subsection C, paragraph 1, expansion of a facility shall conform with the terms and conditions of the applicable permit. For a facility described in § 49-241.01, subsection C, paragraph 2, if the area of the contemplated expansion is not identified in the notice of disposal, the owner or operator of the facility shall submit to the director the information required by § 49-243, subsection A, paragraphs 1, 2, 3 and 7.

25. “New facility” means a previously closed facility that resumes operation or a facility on which construction was begun after August 13, 1986 on a site at which no other facility is located or to totally replace the process or production equipment that causes the discharge from an existing facility. A major modification to an existing facility is deemed a new facility to the extent that the criteria in § 49-243, subsection B, paragraph 1 can be practicably applied to such modification. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

26. “Nonpoint source” means any conveyance that is not a point source from which pollutants are or may be discharged to WOTUS.

27. “Non-WOTUS protected surface water” means a protected surface water that is not a WOTUS.

28. “Non-WOTUS waters of the state” means waters of the state that are not WOTUS.

29. “On-site wastewater treatment facility” means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

30. “Ordinary high watermark” means the line on the shore of an intermittent or perennial protected surface water established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the channel, floodplain and riparian area.

31. “Perennial water” means a surface water or portion of surface water that flows continuously throughout the year.

32. “Permit” means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility. For the purposes of regulating non-WOTUS protected surface waters, a permit shall not include provisions governing the construction, operation or modification of a facility except as necessary for the purpose of ensuring that a discharge meets water quality-related effluent limitations or to require best management practices for the purpose of ensuring that a discharge does not cause an exceedance of an applicable surface water quality standard.

33. “Person” means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.

34. “Point source” means any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged to WOTUS or protected surface water. Point source does not include return flows from irrigated agriculture.

35. “Pollutant” means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

36. “Postclosure monitoring and maintenance” means those activities that are conducted after closure notification and that are necessary to:

(a) Keep the facility in compliance with either the aquifer water quality standards at the applicable point of compliance or, for any aquifer water quality standard that is exceeded at the time the aquifer protection permit is issued, the requirement to prevent the facility from further degrading the aquifer at the applicable point of compliance as provided under [§ 49-243, subsection B](#), paragraph 3.

(b) Verify that the actions or controls specified as closure requirements in an approved closure plan or strategy are routinely inspected and maintained.

(c) Perform any remedial, mitigative or corrective actions or controls as specified in the aquifer protection permit or perform corrective action as necessary to comply with this paragraph and article 3 of this chapter.

(d) Meet property use restrictions.

37. “Practicably” means able to be reasonably done from the standpoint of technical practicability and, except for pollutants addressed in § 49-243, subsection I, economically achievable on an industry-wide basis.

38. “Protected surface waters” means waters of the state listed on the protected surface waters list under § 49-221, subsection G and all WOTUS.

39. “Public waters” means waters of the state open to or managed for use by members of the general public.

40. “Recharge project” means a facility necessary or convenient to obtain, divert, withdraw, transport, exchange, deliver, treat or store water to infiltrate or reintroduce that water into the ground.

41. “Reclaimed water” means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.

42. “Regulated agricultural activity” means the application of nitrogen fertilizer or a concentrated animal feeding operation.

43. “Safe drinking water act” means the federal safe drinking water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

44. “Standards” means water quality standards, pretreatment standards and toxicity standards established pursuant to this chapter.

45. “Standards of performance” means performance standards, design standards, best management practices, technologically based standards and other standards, limitations or restrictions established by the director by rule or by permit condition.

46. “Tank” means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

47. “Toxic pollutant” means a substance that will cause significant adverse reactions if ingested in drinking water. Significant adverse reactions are reactions that may indicate a tendency of a substance or mixture to cause long lasting or irreversible damage to human health.

48. “Trade secret” means information to which all of the following apply:

(a) A person has taken reasonable measures to protect from disclosure and the person intends to continue to take such measures.

(b) The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.

(c) No statute specifically requires disclosure of the information to the public.

(d) The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

49. “Vadose zone” means the zone between the ground surface and any aquifer.

50. “Waters of the state” means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.

51. “Well” means a bored, drilled or driven shaft, pit or hole whose depth is greater than its largest surface dimension.

52. “Wetland” means, for the purposes of non-WOTUS protected surface waters, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

53. “WOTUS” means waters of the state that are also navigable waters as defined by section 502(7) of the clean water act.

54. “WOTUS protected surface water” means a protected surface water that is a WOTUS.

Credits

Added as § 36-3501 by Laws 1986, Ch. 368, § 21, eff. Aug. 13, 1986. Renumbered as § 49-201 and amended by Laws 1986, Ch. 368, §§ 36, 44, eff. July 1, 1987. Amended by Laws 1993, Ch. 31, § 2; Laws 1994, Ch. 237, § 1; Laws 1995, Ch. 262, § 2; Laws 1996, Ch. 194, § 4; Laws 1999, Ch. 26, § 4; Laws 2001, Ch. 357, § 1; Laws 2006, Ch. 228, § 2; Laws 2014, Ch. 115, § 1; Laws 2021, Ch. 325, § 2.

Footnotes

1 Section 49-241 et seq.

A. R. S. § 49-201, AZ ST § 49-201

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

End of Document

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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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Article 10, consisting of Sections R18-9-1001 through R18-9-1014 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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Historical Note

New Section R18-9-B709 renumbered from R18-9-717 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B710. Type 3 Recycled Water General Permit for a Reclaimed Water Agent

- A.** A Type 3 Recycled Water General Permit for a Reclaimed Water Agent allows a person to operate as a Reclaimed Water Agent if 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-B702(I), as applicable;
 2. Impoundment liner requirements specified under 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-B705(C), R18-9-B707(B), and R18-9-B708(B), as applicable.
- B.** A person holding a Type 3 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. The Notice of Intent to Operate shall include:
1. The name, address, e-mail address, and telephone number of the applicant;
 2. The name, address, e-mail address, and telephone number of a contact person;
 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 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.
 4. The source, class, and annual volume of reclaimed water to be delivered by the applicant;
 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
 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 Recycled Water Authorization under R18-9-A704(C).
- E.** A reclaimed water agent shall record and annually report the following information to the Department 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).

Historical Note

New Section R18-9-B710 renumbered from R18-9-718 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART C. RECYCLED INDUSTRIAL WASTEWATER**R18-9-C701. Recycled Water Individual Permit for Industrial Wastewater That Is Reused**

- A.** The following activities are prohibited unless a Recycled Water Individual Permit is obtained under R18-9-A703:
1. Use of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or water from an industrial wastewater treatment facility.
 2. 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-A703(A), an application for a 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.

Historical Note

New Section R18-9-C701 renumbered from R18-9-707 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART D. GRAY WATER**R18-9-D701. Type 1 Recycled Water General Permit for Gray Water**

- A.** A Type 1 Recycled Water General Permit for Gray Water allows private residential use of gray water for a flow of less than 400 gallons per day if all the following conditions are met:
1. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, or landscape 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 watering of food plants, except for 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 hobbyist or home occupational activities;
 5. The gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
 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;
 7. If blockage, backup, or overload of the system occurs, gray water distribution shall cease until the deficiency is corrected. The gray water system may include components to reduce blockage and backup and be operated using best practices to extend system lifetime;

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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. For a 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 the facility can handle the combined black water and gray water flow;
 12. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water; and
 13. Surface application of gray water is only by flood or drip 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 watering and composting, and
 2. Application of gray water by a spray method.
- Historical Note**
New Section R18-9-D701 renumbered from R18-9-711 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).
- R18-9-D702. Type 3 Recycled Water General Permit for Gray Water**
- A.** A Type 3 Recycled Water General Permit for Gray Water allows for the use of gray water for landscape irrigation and composting if:
1. The general permit described in 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 subsections (B) and (C).
- B.** A person shall file a Notice of Intent to Operate a Gray Water System with the Department 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 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 system;
 5. The applicant's certification that the applicant agrees to comply with the requirements of this Article and the terms of this Recycled Water General Permit for Gray Water; and
 6. The applicable permit fee specified under 18 A.A.C. 14.
- C.** The following requirements apply to the design, installation, and operation of a gray water system allowed under this Recycled Water General Permit for Gray Water:
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 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.
- Historical Note**
New Section R18-9-D702 renumbered from R18-9-719 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).
- 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

ATTACHMENT A5

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45- 1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45- 1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply (CAWS)	A.A.C. R12-15-704, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply (DAWS)	A.A.C. R12-15-710 and R12-15-714; A.R.S. § 45-576	150	60	210
72	Analysis of Assured Water Supply	A.A.C. R12-15-703, A.R.S. § 45-576(H)	150	30	180
73	Water Report	A.A.C. R12-15-713, A.R.S. § 45-108	60	60	120
74	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15-714, A.A.C. R12-15-715 A.R.S. § 45-108	150	60	210
75	Analysis of Adequate Water Supply	A.R.S. § 45-108 A.A.C. R12-15-712	60	60	120

* The computation of days is prescribed by subsection (4).

** Hearing is required.

Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Table A amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2107 (Supp. 17-3).

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
 - a. The land has been developed for another use; or
 - b. Legal restrictions will preclude approval of the plat.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Adequate delivery, storage, and treatment works" means:

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- a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
 - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and
 - c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use.
 5. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
 6. "AMA" means an active management area as defined in A.R.S. § 45-402.
 7. "Analysis" means an analysis of assured water supply or an analysis of adequate water supply.
 8. "Analysis holder" means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
 9. "Analysis of adequate water supply" means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
 10. "Analysis of assured water supply" means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.
 11. "Annual authorized volume" means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
 - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
 - b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
 12. "Annual estimated water demand" means the estimated water demand divided by 100.
 13. "Approved remedial action project" means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
 14. "Authorized remedial groundwater use" means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
 15. "Build-out" means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
 16. "CAP water" means:
 - a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
 - b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
 17. "Central Arizona Groundwater Replenishment District" or "CAGRDR" means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.
 18. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
 19. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
 20. "Certificate" means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.
 21. "Certificate holder" means any person included on a certificate, except the following:
 - a. Any person who no longer owns any portion of the property included in the certificate, and
 - b. Any potential purchaser for whom the purchase contract has been terminated or has expired.
 22. "Certificate of convenience and necessity" means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.
 23. "Colorado River water" means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.
 24. "Committed demand" means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.
 25. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
 26. "Current demand" means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.
 27. "Depth-to-static water level" means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.
 28. "Designated provider" means:
 - a. A municipal provider that has obtained a designation of assured or adequate water supply; or
 - b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).
 29. "Designation" means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.
 30. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.
 31. "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.
 32. "Development" means either a subdivision or an unplatted development plan.
 33. "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.

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34. "Drought response plan" means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:
- An identification of priority water uses consistent with applicable public policies.
 - A description of sources of emergency water supplies.
 - An analysis of the potential use of water pressure reduction.
 - Plans for public education and voluntary water use reduction.
 - Plans for water use bans, restrictions, and rationing.
 - Plans for water pricing and penalties for excess water use.
 - Plans for coordination with other cities, towns, and private water companies.
35. "Drought volume" means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.
36. "Dry lot development" means a development or subdivision without a central water distribution system.
37. "EPA" means the United States Environmental Protection Agency.
38. "Estimated water demand" means:
- For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;
 - For a designation, the sum of the following:
 - The Director's determination of the current demand;
 - The Director's determination of the committed demand; and
 - The Director's determination of the projected demand during the term of the designation; or
 - For an analysis, the Director's determination of the water demand for all uses included in the development.
39. "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.
40. "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.
41. "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.
42. "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.
43. "Management plan" means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.
44. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
45. "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
46. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
47. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
48. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
49. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
50. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
51. "Owner" means:
- For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
 - For a designation applicant, the person who will be providing water service pursuant to the designation.
52. "Perennial" means a stream that flows continuously.
53. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
54. "Physical availability determination" means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
55. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
56. "Potential purchaser" means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
57. "Projected demand" means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider's service area and reasonably anticipated expansions of the designated provider's service area.
58. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
59. "Purchase agreement" means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.
60. "Remedial groundwater" means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
61. "Service area" means:
- For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider's operating distribution system for the delivery of water for a non-irrigation use;
 - For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or
 - For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.
62. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.

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63. "Superfund site" means the site of a remedial action undertaken pursuant to CERCLA.
64. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
65. "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.
66. "Water report" means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired.
Amended by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-702. Physical Availability Determination

- A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and providing the following information with the application:
 1. The proposed source of water for which the applicant is seeking a determination of physical availability,
 2. Evidence that the applicant has complied with subsection (C) of this Section, and
 3. Any other information that the Director reasonably deems necessary to determine whether water is physically available in the area that is the subject of the application.
- B. Each applicant shall sign an application for a physical availability determination. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the determination, the authorized representative may sign the application on the applicant's behalf.
- C. An applicant for a physical availability determination shall demonstrate the following:
 1. The volume of water that is physically available for 100 years in the area that is the subject of the application, according to the criteria in R12-15-716.
 2. That the proposed sources of water will be of adequate quality, according to the criteria in R12-15-719.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine whether the applicant has demonstrated all of the criteria in subsection (C) of this Section. If the Director determines that the applicant has demonstrated all of the criteria in subsection (C) of this Section, the Director shall issue a physical availability determination.
- E. Any person applying for a determination of assured water supply or a determination of adequate water supply may use an existing physical availability determination for purposes of R12-15-716. The Director shall consider any changes in hydrologic conditions for purposes of R12-15-716.
- F. The issuance of a physical availability determination does not reserve any water for purposes of this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703. Analysis of Assured Water Supply

- A. A person proposing to develop land that will not be served by a designated provider may apply for an analysis of assured water supply before applying for a certificate. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona or may consent to the inclusion of such land in an application.
- B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted, demonstrating the ownership of the land that is the subject of the application;
 2. A description of the development, including:
 - a. A map of the land uses included in the development,
 - b. A list of water supplies proposed to be used by the development,
 - c. A summary of land use types included in the development, and
 - d. An estimate of the water demand for the land uses included in the development; and
 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the analysis, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:
 1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716.
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717.
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718.
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
 5. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721.

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6. Any proposed groundwater use is consistent with the management goal, according to the criteria in R12-15-722.
- F.** For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) of this Section, the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
 2. If an analysis holder applies for a certificate for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the certificate, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the certificate that will be met with groundwater.
- G.** The Director shall reduce the amount of groundwater considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the name of the person's designee for purposes of this subsection.
- H.** The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
 2. The analysis holder has made material progress in developing the land included in the analysis.
 3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I.** After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J.** The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.
- gency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703.01. Repealed**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 3038, effective June 18, 2001 (Supp. 01-2). Section repealed by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-704. Certificate of Assured Water Supply

- A.** An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.
- B.** An applicant for a certificate shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
 - a. For an applicant that is the current owner, one of the following:
 - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or
 - ii. Evidence that the CAGRD has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application;
 - b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or
 - c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. A list of all proposed sources of water that will be used by the subdivision;
 5. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
 6. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C.** Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- D.** The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emer-

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- E.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The estimated water demand of the subdivision;
 2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
 3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.
- F.** Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
 6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.
- G.** If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:
1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
 2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
 3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
 4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
 5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
 6. The applicant demonstrates that the requirements in subsections (F)(3) through (6) of this Section are met.
- H.** Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. **Type A certificate.** The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:
 - a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
 - b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
 - c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
 - d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
 - e. Effluent owned and served by a proposed municipal provider; or
 - f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
 2. **Type B certificate.** The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.
- I.** The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.
- J.** An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:
 - a. A plat was recorded before 1980; or
 - b. A certificate was issued before February 7, 1995;
 2. No changes were made to the plat since February 7, 1995; and
 3. Water service is currently available to each lot.
- K.** A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;
 2. Water service is currently available to each lot; and
 3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.
- L.** An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:
1. A plat for the subdivision was recorded before October 1, 2007;
 2. There have been no material changes to the plat according to the criteria in R12-15-708, since October 1, 2007;
 3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and
 4. Water service is currently available to each lot.
- M.** A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), (K), or (L) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J), (K), or (L) are met. Upon receiving an application pursuant to this subsection, the Director shall:
1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
 2. Determine whether the criteria of subsection (J), (K), or (L) of this Section are met.
 3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant

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and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.

4. If the Director determines that the criteria of subsection (K) or (L) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-705. Assignment of Type A Certificate of Assured Water Supply

- A. The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
 1. One of the following forms of proof of ownership for each assignee:
 - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
 - b. If the assignee is a potential purchaser, evidence of a purchase agreement;
 2. A current plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
 4. Certification by each applicant that:
 - a. The proposed municipal provider has not changed and has agreed to continue to serve the subdivision after the assignment; and
 - b. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment.
- B. Each applicant shall sign the application for an assignment of a Type A certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C. Upon receiving an application for an assignment of a Type A certificate, the Director shall post the notice required by A.R.S. § 45-579(E).
- D. If the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type A certificate to each applicant. A Type A certificate issued under

this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (E) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:

1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
 2. The assignee is the owner or a potential purchaser of the portion of the subdivision that is the subject of the assignment;
 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
 4. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
 5. The applicant makes the certifications required in subsection (A)(4) of this Section.
- E. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type A certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type A certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate being assigned.
 - F. The Director shall review an application for an assignment of a Type A certificate of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 4390, effective November 22, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-706. Assignment of Type B Certificate of Assured Water Supply

- A. The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
 1. One of the following forms of proof of ownership for each assignee:
 - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner

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- of the land that is the subject of the proposed assignment; or
- b. If the assignee is a potential purchaser, evidence of a purchase agreement;
 2. A current plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
 4. Evidence that all necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
 5. Evidence that the assignee has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
 6. Evidence that all water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
 7. Evidence that the proposed municipal provider has not changed and has agreed to serve the subdivision after the assignment;
 8. If the applicant requests that the Director classify the certificate pursuant to subsection (E) of this Section, evidence that the requirements of R12-15-704(H)(1) are satisfied;
 9. Any other information that the Director reasonably deems necessary to determine whether the application meets the criteria of A.R.S. § 45-579.
- B.** Each applicant shall sign the application for an assignment of a certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- C.** Upon receiving an application for an assignment, the Director shall post the notice required by A.R.S. § 45-579(E).
- D.** Except as provided in subsection (E) of this Section, if the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type B certificate to each applicant. A Type B certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (F) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
 2. The assignee is the owner or potential purchaser of the portion of the subdivision that is the subject of the assignment;
 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
 4. The applicant demonstrates the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
 5. All necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
 6. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
 7. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
 8. The proposed municipal provider has agreed to serve the subdivision after the assignment.
- E.** The applicant may include in the application a request to classify the certificate as a Type A certificate. If the Director determines that the request meets the requirements of R12-15-704(H)(1), the Director shall classify the certificate as a Type A certificate.
- F.** In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type B certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type B certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate that is being assigned.
- G.** The Director shall review an application for an assignment of a Type B certificate pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-707. Application for Classification of a Type A Certificate

- A.** A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by submitting an application on a form prescribed by the Director with the initial fee prescribed in R12-15-103(C), and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).
- B.** At least one certificate holder shall sign the application for classification of a certificate as a Type A certificate. If the applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C.** If the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, the Director shall classify the certificate as

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a Type A certificate and issue a Type A certificate to each certificate holder.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-708. Material Plat Change; Application for Review

- A.** A certificate or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat, unless the plat changes are material according to subsections (C) and (D) of this Section.
- B.** If a plat is revised after the Director issues a certificate or a water report and the changes to the plat are material according to subsection (C) or (D) of this Section, the holder may:
1. Apply for a new certificate or water report for the revised plat,
 2. Use the original plat for which the certificate or water report was issued, or
 3. Revise the plat so that any changes are not material according to subsections (C) and (D) of this Section.
- C.** Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:
1. The number of lots on the plat has increased by more than:
 - a. For subdivisions of six to 10 lots: one lot;
 - b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
 - c. For subdivisions of 500 lots or more: 50 lots.
 2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate, unless all of the following apply:
 - a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
 - b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
 - c. For a certificate, one of the following applies:
 - i. The subdivision is enrolled as a member land in the CAGRDR;
 - ii. Groundwater is not included as a source of supply; or
 - iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
 3. For a certificate, additional land is included in the plat, unless all of the following apply:
 - a. The land included in the original plat for which the certificate was issued is located in a master-planned community;

- b. The outer boundaries of the master-planned community have not expanded;
- c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGRDR, the additional land has also been enrolled in the CAGRDR; and
- d. A certificate has been issued for the additional land.

- D.** Changes to a portion of a plat are not material if one of the following applies:
1. The changes to the portion of the plat being reviewed are not material according to subsection (C) of this Section when compared to the equivalent portion of the plat for which the certificate was issued;
 2. The changes to the entire revised plat are not material according to subsection (C) of this Section when compared to the entire plat for which the certificate was issued; or
 3. For a partial assignment pursuant to R12-15-705 or R12-15-706, the plat for the portion of the subdivision retained by the certificate holder could be configured so that changes to the total number of lots and the estimated water demand for the entire subdivision, including the portion under consideration, are not material according to subsection (C) of this Section. For purposes of this subsection, the Director may require the applicant to submit evidence demonstrating whether changes to the plat are material. However, the Director shall not require the applicant to submit a plat for the retained portion of a subdivision, unless the materiality of changes to the plat cannot be determined with any other evidence.
- E.** A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:
1. The applicant shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and shall attach the revised plat.
 2. The Director shall review the revised plat and the plat for which the certificate or water report was originally issued to determine whether any changes are material according to the criteria in subsections (C) and (D) of this Section.
 3. The Director shall issue a letter to the applicant stating whether any changes to the plat are material and identifying which changes, if any, are material. If the Director determines that the changes to the plat are not material, the Director's letter shall state that the certificate or water report is applicable to the revised plat.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-709. Certificate of Assured Water Supply; Revocation

- A.** The Director may revoke a certificate if an assured water supply does not exist.
- B.** The Director shall not revoke a certificate if any of the residential lots within the plat have been sold.
- C.** If the Director determines that a certificate should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10. To determine whether a certificate should be revoked, the Director shall use the standards in place at the time the original application was submitted for the certificate.

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Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-710. Designation of Assured Water Supply

- A.** A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. The applicant's current demand;
 2. The applicant's committed demand;
 3. The applicant's projected demand for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years;
 5. Evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B.** An application for a designation shall be signed by:
1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
 2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- C.** The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578.
- D.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The annual volume of water physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The applicant's estimated water demand;
 4. The applicant's groundwater allowance; and
 5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.
- E.** The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
 6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.

- F.** The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A.** A designated provider shall include in the annual report required by A.R.S. § 45-632 the following information for the preceding calendar year:
1. The designated provider's committed demand;
 2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
 3. A report regarding the designated provider's compliance with water quality requirements;
 4. The depth-to-static water level of all wells from which the designated provider withdrew water; and
 5. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply.
- B.** If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C.** The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked. To determine whether the designation should be modified or revoked, the Director shall use the standards in place at the time of review.
- D.** The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider.
- E.** A designated provider may request a modification of the designation at any time pursuant to R12-15-710.
- F.** The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-710(E), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand during the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner;
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
 4. The designated provider has violated its management plan requirements for two or more consecutive calendar years, and one of the following applies:
 - a. The provider fails to amend its water use plan in a manner that the Director determines will achieve compliance, or

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- b. The provider fails to sign a stipulated agreement to remedy the violation.
- G.** If the Director determines that a designation of assured water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- H.** If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- I.** Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.
- Historical Note**
- Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
- R12-15-712. Analysis of Adequate Water Supply**
- A.** A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.
- B.** An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director, demonstrating the ownership of the land that is the subject of the application;
 2. A description of the development, including:
 - a. A map of the land uses included in the development,
 - b. A list of water supplies proposed to be used by the development,
 - c. A summary of land use types included in the development, and
 - d. An estimate of the water demand for the land uses included in the development; and
 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C.** An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.
- D.** After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E.** The Director shall issue an analysis if an applicant demonstrates one or more of the following:
1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
- F.** For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
 2. If an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.
- G.** The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.
- H.** The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
 2. The analysis holder has made material progress in developing the land included in the analysis.
 3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I.** After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J.** The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

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Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-713. Water Report

- A. An application for a water report shall be filed by the current owner of the land that is the subject of the application.
- B. An applicant for a water report shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. A list of all proposed sources of water that will be used by the subdivision;
 5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.
- C. Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
 1. The estimated water demand of the subdivision,
 2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this Section.
- E. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:
 1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.
- F. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.

- G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.
- H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:
 1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10; and
 2. Notify the Arizona Department of Real Estate.
- I. An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.
- J. A water report is subject to the provisions of R12-15-708.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-714. Designation of Adequate Water Supply

- A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the following:
 1. The applicant's current demand;
 2. The applicant's committed demand;
 3. The applicant's projected demand for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years;
 5. Evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.
- B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the initial fee required in R12-15-103(C), and provide the following:
 1. The current demand of the applicant's service area;
 2. The committed demand of the applicant's service area;
 3. The projected demand of the applicant's service area for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years; and
 5. Evidence that the requirements in A.R.S. § 45-108(D) are met.
- C. An application for a designation shall be signed by:
 1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or

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2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
 1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The estimated water demand for the applicant's service area for 100 years; and
 4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.
- E. The Director shall designate the applicant as having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:
 1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719; and
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.
- F. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.
- G. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.
- B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.
- D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.
- E. The Director may revoke a designation if:
 1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand for the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.
- F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:
 1. The designated provider's committed demand;
 2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
 3. A report regarding the designated provider's compliance with water quality requirements;
 4. The depth-to static water level of all wells from which the designated provider withdrew water;
 5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
 6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.

Historical Head

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-716. Physical Availability

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through (L) of this Section.
- B. If the proposed source is groundwater, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
 1. The groundwater will be withdrawn as follows:
 - a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within

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the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.

- b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
- 2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot developments	1200 feet below land surface
d. Dry lot developments	400 feet below land surface

- 3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:
 - a. The depth-to-static water level on the date of application.
 - b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
 - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
 - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
 - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
 - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.
 - d. The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.

- C. The Director shall lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the applicant demonstrates both of the following:
 - 1. Groundwater is available at the lower depth; and
 - 2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.
- D. If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:
 - 1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
 - 2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.
- E. Subject to subsection (L) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:
 - 1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
 - 2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.
- F. Subject to subsection (L) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
 - 1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.

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2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
 3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (F)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.
- G.** Subject to subsection (L) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.
 2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (G)(2)(a) of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.
- H.** Subject to subsection (I) of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:
1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
 2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.
- I.** If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:
1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection (I)(3) of this Section.
 2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
 - a. The terms of a contract to obtain water to store in a storage facility;
 - b. The physical, continuous, and legal availability of the water proposed to be stored;
 - c. The presence of an existing storage facility that will be available for use for the proposed storage;
 - d. The existence of all required permits of an adequate duration; and
 - e. Whether recovery of the stored water will comply with subsection (I)(3) of this Section.
 3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
 - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
 - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.
- J.** If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.
- K.** In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.
- L.** For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:
1. The land that is the subject of the application is a member land of the CAGRD.
 2. The applicant has independently obtained the surface water supply.
 3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

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Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-717. Continuous Availability

- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.
- B.** If the proposed source of water is groundwater, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.
- C.** If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:
1. The projected volume to be diverted from the source is perennial at the point of diversion;
 2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
 3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies;
 4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity to meet the applicant's estimated water demand on a continuous basis for 100 years; or
 5. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.
- D.** If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:
1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
 2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
 3. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume subject to drought.
- E.** If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.
- F.** If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.
- G.** If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will

use will be continuously available in accordance with the terms of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-718. Legal Availability

- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.
- B.** If the applicant is an applicant for a certificate or a water report, the applicant shall submit the following, as applicable:
1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the proposed municipal provider, stating the proposed municipal provider's intent to serve the subdivision;
 2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; or
 3. If the proposed municipal provider is a private water company, one of the following:
 - a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by the Arizona Corporation Commission and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the Arizona Corporation Commission authorizes the private water company to serve water;
 - b. Evidence that the proposed municipal provider has an order preliminary issued by the Arizona Corporation Commission authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or
 - c. Evidence that the proposed municipal provider is not a public service corporation regulated by the Arizona Corporation Commission.
- C.** If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission, or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.
- D.** If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:
1. A service area right;
 2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or
 3. A pending notice of intent to establish a new service area and all of the following apply:

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- a. The notice of intent to establish a new service area identifies the proposed subdivision,
 - b. The applicant or the proposed municipal provider has obtained a permit for any wells used to establish the service area right,
 - c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and
 - d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.
- E.** If a proposed source of water is surface water other than CAP water or Colorado River water:
1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application, the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
 2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
 - a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;
 - b. Evidence that a court has determined that the right has not been abandoned; or
 - c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
 3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.
- F.** Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.
- G.** Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:
1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
 2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
 - a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
 - b. The entity provides Colorado River water to the proposed municipal provider;
 - c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and
 - d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.
- H.** If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.
- I.** If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.
- J.** If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.
- K.** If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.
- L.** If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.
- M.** If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands, evidence of the lease, and evidence of one of the following:
1. The proposed water supply is available under the lease for at least 100 years from any time during the year in which the applicant submits the application.
 2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:
 - a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to

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recover water pursuant to the long-term storage credits; or

- b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.
- N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:
1. The lease has at least 50 years remaining in its term or the lease has at least 40 years remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and
 2. One of the following applies:
 - a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with the management goal of the AMA. For purposes of this subsection, the designated provider may demonstrate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;
 - c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
 - d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:
 - i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and

- iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-719. Water Quality

- A. Except as provided in subsection (B) of this Section, when reviewing an application for a determination of assured water supply or a determination of adequate water supply, the Director shall determine that the water supply is of adequate quality if one of the following applies:
1. The applicant certifies on the application that the applicant or the proposed municipal provider will be regulated by ADEQ, or another governmental entity with equivalent jurisdiction, as a public water system pursuant to A.R.S. § 49-351, et seq., unless ADEQ, or another governmental entity with equivalent jurisdiction, has determined, after notice and an opportunity for a hearing, that the public water system is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
 2. The applicant has submitted results of a lab analysis demonstrating that the water meets water quality requirements in accordance with A.A.C. Title 18, Chapter 4, or that the water will meet these requirements after treatment that is required by law. The lab analysis shall be based on water withdrawn from a well representative of the well or wells from which water will be withdrawn for the proposed use, conducted in compliance with sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, and completed within 60 days of the date the application is submitted to the Director. If ADEQ waives any of the water quality or sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, the Director shall not require the applicant to meet the waived requirements.
- B. If a well or a proposed well from which water will be withdrawn for the proposed use is located within one mile of a WQARF site or Superfund site, the Director shall determine that the water supply is of adequate quality only if the applicant submits a contaminant migration and mitigation analysis, demonstrating that the water supply will continue to meet the requirements in A.A.C. Title 18, Chapter 4 for 100 years. The contaminant migration and mitigation analysis may include the impact of any mitigation or treatment, including mitigation or treatment required pursuant to a consent decree.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-720. Financial Capability

- A. The Director shall determine that an applicant for a certificate or a water report has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following:
1. The applicant will submit its final plat to a qualified platting authority;
 2. The applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot; or

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- 3. The applicant has posted a performance bond with the platting authority for the entire cost of adequate delivery, storage, and treatment works.
- B. Upon receiving evidence that a platting authority has established standards for proof of financial capability to construct adequate delivery, storage, and treatment works, pursuant to A.R.S. § 9-463.01(C)(8) or A.R.S. § 11-806.01(G), the Director shall classify the platting authority as a qualified platting authority. The Director shall maintain a list of qualified platting authorities.
- C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:
 - 1. The applicant has constructed adequate delivery, storage, and treatment works;
 - 2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;
 - 3. If the applicant is a city or town, the applicant has:
 - a. Adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant’s chief financial officer that finances are available to implement that portion of the five-year plan; or
 - b. Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or
 - 4. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery, storage, and treatment works.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-721. Consistency with Management Plan

- A. The Director shall determine whether a designation applicant’s projected use of groundwater withdrawn within an active management area is consistent with the management plan as follows:
 - 1. If the applicant is providing water to customers as of the date of application, the applicant’s projected water use is consistent with the management plan if either of the following apply:
 - a. The applicant is in compliance with its applicable management plan requirements in the most recent calendar year for which data is available before the date of application; or
 - b. The applicant has signed a stipulation and consent order that is in effect on the date of the application, or that becomes effective during the time of review of the application, to remedy non-compliance with the management plan requirements and the applicant is in compliance with the terms of the stipulation and consent order.
 - 2. If the applicant has not commenced serving water to customers as of the date of application, the applicant shall submit a water use plan that demonstrates to the Director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.

- 3. If the applicant has a pending request for an administrative review or variance from its management plan requirements, the Director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been withdrawn.
- B. The Director shall determine that a certificate applicant’s projected use of groundwater withdrawn within an AMA is consistent with the management plan if the applicant submits a water use plan for the subdivision that includes both of the following:
 - 1. Information demonstrating that compliance with management plan requirements will be achieved through conservation or augmentation measures; and
 - 2. All information required to calculate the water requirements for each proposed water use.
- C. A certificate applicant for a subdivision of 50 or fewer lots is exempt from the requirements of this rule.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-722. Consistency with Management Goal

- A. For the Phoenix, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located for at least 100 years by adding the following:
 - 1. The amount of the groundwater allowance, according to R12-15-724(A), R12-15-726(A), or R12-15-727(A).
 - 2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), R12-15-726(B), or R12-15-727(B).
 - 3. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- B. The Director shall determine that a proposed groundwater use in the Phoenix, Prescott, or Tucson AMA is consistent with the management goal of the AMA if the volume calculated in subsection (A) is equal to or greater than the portion of the applicant’s estimated water demand to be met with groundwater.
- C. For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:
 - 1. The amount of the groundwater allowance, according to R12-15-725(A)(1).
 - 2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after January 1, 2019, according to R12-15-725(B), except that annual reported use of such extinguishment credits to make groundwater use consistent with the management goal is limited to the following percentages of groundwater use from the sixth year after certificate issuance:

Years After Certificate Issuance	Percentage of Total Groundwater Use that May Be Made Consistent with the Pinal AMA Management Goal with Extinguishment Credits Pledged to Certificate
Years Six through Ten	75%
Years Eleven through Fifteen	50%
Years Sixteen through Twenty	25%

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Years Twenty-one and After	0%
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- 3. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019.
- 4. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before October 1, 2007. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.
- 5. Any groundwater that is consistent with achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- D.** For a certificate in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (C) is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.
- E.** For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis for at least 100 years by adding the following for each year during the 100-year period:
 - 1. The amount of the groundwater allowance, according to R12-15-725(A)(2). If any of the groundwater allowance is not used during a year, the unused groundwater allowance shall not be added to the volume calculated under this subsection for the following year.
 - 2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after January 1, 2019, divided by the number of years remaining in which the credits may be used pursuant to R12-15-725(B). These credits shall be included in the calculation only for those years in which the credits may be used. If any of the extinguishment credits were originally pledged to a certificate and are being used to support the municipal provider's designation pursuant to R12-15-723(G)(2), the extinguishment credits shall not be limited by the percentages in subsection (C)(2) of this section.
 - 3. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019, divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019 may be used in any year.
 - 4. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before October 1, 2007. The following shall apply if any of the extinguishment credits are not used during a calendar year:
 - a. If the extinguishment credits were pledged to the designation before October 1, 2007, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
 - b. If the extinguishment credits are pledged to the designation on or after October 1, 2007, any of the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a certificate before October 1, 2007 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a

calendar year shall be added to the volume calculated under this subsection for the following calendar year.

- 5. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- F.** For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the volume calculated in subsection (E) for each year during the 100-year period is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.
- G.** Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:
 - 1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E), withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
 - 2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
 - 3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.
- H.** An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4). At the request of the Department R12-15-722(A)(2) through (5) have been removed since they were not part of the amendments made to this Section in Supp. 18-4; subsections R12-15-722(A)(2) through (3) as amended at 13 A.A.R. 1394 have been restored (Supp. 19-2).

R12-15-723. Extinguishment Credits

- A.** Except as provided in subsection (D), the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:
 - 1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
 - 2. The grandfathered right number;
 - 3. If the right being extinguished is a Type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
 - 4. If the grandfathered right is located in the Prescott AMA, evidence that all of the following conditions are met:
 - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and

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- b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;
5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; and
6. Any additional information the Director may reasonably require to process the extinguishment.
- B.** The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.
- C.** A Type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A Type 2 non-irrigation grandfathered right may be extinguished only in whole.
- D.** The following rights may not be extinguished in exchange for extinguishment credits:
1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.
 2. A Type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.
 3. A Type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.
 4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.
 5. A Type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).
- E.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.
- F.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.
- G.** Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider or a municipal provider that is applying for a designation, any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated. If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.
- H.** The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.
- I.** A person may apply to the Director on or before December 31, 2015 for the restoration of all or a portion of an irrigation grandfathered right extinguished under this Section during calendar year 2005, 2006 or 2007 if all of the following conditions are met:
1. The person owns the land to which the right or portion of the right was appurtenant;
 2. The land to which the right or portion of the right was appurtenant is physically capable of being irrigated and the infrastructure for delivering water to the land for irrigation purposes remains intact and is operable;
 3. The person holds extinguishment credits that were issued for the extinguishment of a grandfathered right in the AMA in which the land is located and that have not been pledged to a certificate or designation under subsection (E) or (F) in the following amount, as applicable:
 - a. If the person seeks to restore the entire irrigation grandfathered right, an amount of extinguishment credits equal to the amount of extinguishment credits issued by the Director in exchange for extinguishment of the irrigation grandfathered right; or
 - b. If the person seeks to restore a portion of the irrigation grandfathered right, an amount of extinguishment credits equal to the result obtained by multiplying the percentage of the right sought to be restored by the amount of extinguishment credits issued by the Director in exchange for the extinguishment of the right.
- J.** An application to restore all or a portion of an irrigation grandfathered right under subsection (I) shall be on a form provided by the Director and include all of the following:
1. A fee of \$250.00;
 2. The irrigation grandfathered right number of the right sought to be restored;
 3. If a certificate of extinguishment credits was issued by the Director for the extinguishment credits described in subsection (I)(3), the original certificate or an affidavit stating that the certificate is lost;
 4. A copy of a deed showing that the applicant owns the land to which the right or portion of the right sought to be restored was appurtenant and, if the application seeks to restore only a portion of the right, the legal description of the land to which that portion of the right was appurtenant;
 5. A certification by the applicant that the conditions described in subsection (I) are met; and
 6. An agreement in writing that if the right or portion of the right is restored, the flexibility account for the land to which the right or portion of the right is appurtenant shall

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have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and that any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.

- K. The Director shall approve an application to restore all or a portion of an irrigation grandfathered right submitted under subsection (I) if the application includes the fee and the information required under subsection (J) and the Director determines that the information is correct. If the Director approves an application to restore all or a portion of an irrigation grandfathered right, all of the following apply:
 1. The irrigation water duty for the land to which the right or portion of the right is restored shall be the same as it was when the right was extinguished, unless the irrigation water duty is changed in a management plan adopted after the right was extinguished or is modified pursuant to A.R.S. § 45-575;
 2. The flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.
 3. The applicant shall forfeit the extinguishment credits described in subsection (I)(3); and
 4. The restored irrigation grandfathered right may be extinguished in exchange for extinguishment credits under this Section. For purposes of calculating the amount of extinguishment credits under R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B), the calendar year of extinguishment is the calendar year in which the restored irrigation grandfathered right is extinguished.
- L. The Director shall review an application to restore an irrigation grandfathered right under subsection (I) pursuant to the licensing time-frame provisions in R12-15-401. The application shall have an administrative completeness review time-frame of 30 days, a substantive review time-frame of 90 days, and an overall time-frame of 120 days.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 17 A.A.R. 1989, effective September 13, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:
 1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	4
Fourth	2
Fifth	1
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.
3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
4. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

- B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:
 1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

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1. If the application is for a certificate:
 - a. If the certificate application is filed before January 1, 2019, multiply the annual estimated water demand for the proposed subdivision by 10.
 - b. If the certificate application is filed on or after January 1, 2019, the groundwater allowance shall be zero.
2. If the application is for a designation:
 - a. If the applicant was designated as having an assured water supply as of October 1, 2007:
 - i. Multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
 - ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
 - iii. Determine the number of residential lots within plats that were recorded as of October 1, 2007 but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.
 - iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) by 0.35 acre-foot per lot.
 - v. Add the volume from subsection (A)(2)(a)(ii) and the volume from subsection (A)(2)(a)(iv) of this Section.
 - b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed before January 1, 2012, multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
 - c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet.
 - d. If the applicant commenced providing water to its customers on or after October 1, 2007, the applicant's groundwater allowance is zero acre-feet.
3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor by submitting a hydrologic study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated pro-

vider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider upon such demonstration.

- B. The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Pinal AMA as follows:
 1. The Director shall calculate the initial volume of extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:
 - a. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate of grandfathered right by 100.
 - b. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by 100, except that:
 - i. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, only those acres associated with the portion of the right that is extinguished shall be included in the calculation; and
 - ii. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the amount of the debit shall be subtracted from the amount of the extinguishment credits.
 2. For grandfathered rights extinguished in the Pinal active management area on or after January 1, 2019, if the amount of the extinguishment credits remaining unused in the fifth, tenth, fifteenth, and twentieth year after the year of extinguishment is greater than an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage shown in the table below, the amount of unused credits shall be reduced to an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage:

Year After Extinguishment	Percentage
Fifth	75%
Tenth	50%
Fifteenth	25%
Twentieth	0%

3. For purposes of subsection (B)(2), the amount of extinguishment credits remaining unused shall be the initial volume of extinguishment credits issued for the extinguishment of the right, less:
 - a. The amount of any of the extinguishment credits previously pledged to a certificate of assured water supply or designation of assured water supply pursuant to R12-15-723, subsections (E) or (F) and reported to the department as having been used; and

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- b. The amount of any previous reductions made to the extinguishment credits pursuant to subsection (B)(2).

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1979, effective January 2, 2010 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013 (Supp. 13-4). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.01. Repealed**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013; with automatic repeal date of September 15, 2014 (Supp. 13-4). Section amended with automatic repeal, removed by final rulemaking at 20 A.A.R. 2673; effective September 12, 2014 (Supp. 14-3). Repealed by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.02. Repealed**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 4174, effective September 15, 2014 (Supp. 13-4). Repealed by final rulemaking at 20 A.A.R. 2673, effective September 12, 2014 (Supp. 14-3).

R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Prescott AMA as follows:
1. If the application is for a certificate of assured water supply, the Director shall:
 - a. Subtract the year of application from 2025,
 - b. Multiply the number determined in subsection (A)(1)(a) by the applicant's annual estimated water demand, and
 - c. Divide that product by two. The minimum volume that may be calculated in this subsection is zero acre-feet.
 2. If the application is for a designation of assured water supply:
 - a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:
 - i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
 - ii. Determine the volume of the applicant's total water demand, from any source, for 1999, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
 - iii. Determine the volume of the applicant's total water demand, from any source, for 2014, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
 - iv. Subtract the volume calculated in subsection (A)(2)(a)(ii) from the volume calculated in subsection (A)(2)(a)(iii) and then multiply the difference by 26;
 - v. Divide the product obtained in subsection (A)(2)(a)(iv) by two;
 - vi. If any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;
 - vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999, and ending December 31 of the calendar year before the date of the application;
 - viii. Multiply the volume of groundwater withdrawn by the applicant from within the Prescott active management area in 1999 by the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application;
 - ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero; and
 - x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).
 3. If the applicant did not exist as of January 12, 1999, or the date of application occurs after calendar year 2025, the groundwater allowance is zero acre-feet, except that if any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, the groundwater allowance is a volume of groundwater computed by multiplying one-half acre-foot of groundwater by the number of housing units receiving the service and multiplying that product by 100.
- For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):
- a. To compute this amount of groundwater, the Director shall:
 - i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of

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applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Tucson AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
 4. For each calendar year of the designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Tucson AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.
- B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Tucson AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.
- Historical Note**
- New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
- R12-15-728. Reserved**
- R12-15-729. Remedial Groundwater; Consistency with Management Goal**
- A.** Use of remedial groundwater by a municipal provider before January 1, 2025, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:
1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
 2. The municipal provider complies with the metering and reporting requirements in subsection (K) of this Section.
- B.** A municipal provider that is using remedial groundwater or that has agreed in a consent decree or other document approved by ADEQ or the EPA to use remedial groundwater may apply to the Director for a determination that the municipal provider's use of the remedial groundwater is consistent with the management goal of the active management area by submitting an application on a form provided by the Director with the information required in subsection (D) of this Section before January 1, 2010.
- C.** A municipal provider filing an application under subsection (B) of this Section for remedial groundwater use associated with a treatment plant in operation before June 15, 1999, may request an increase in the project's annual authorized volume at the time the application is filed. The Director shall grant the request and increase the annual authorized volume up to the maximum treatment capacity of the treatment plant if the municipal provider submits evidence that an increase in the annual authorized volume is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the remedial action project.
- D.** An applicant shall provide the following with an application submitted under subsection (B) of this Section:
1. A document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
 2. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
 3. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
 4. A reference to the annual authorized volume provided in the document submitted pursuant to subsection (D)(1) of this Section or, if the document submitted pursuant to subsection (D)(1) does not specify the annual authorized volume for the project, the annual authorized volume claimed by the municipal provider and a written justification for that volume;
 5. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
 6. The designated provider or certificate to which the remedial groundwater will be pledged;
 7. If the municipal provider is requesting an increase in the annual authorized volume of the project pursuant to subsection (C) of this Section, evidence that the increase is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project;
 8. The name and telephone number of a person the Department may contact regarding the application; and

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9. Any other information reasonably required to assist the Director in making the determination under subsection (F) of this Section.
- E.** After receiving an application under subsection (B) of this Section, the Director shall determine that the application is complete and correct if it contains all the information required in subsection (D) of this Section and the Director verifies that the information is accurate. If the Director determines that the application is complete and correct, the Director shall assign a priority date to the application according to the following:
1. If the Director determines that the application was complete and correct when filed, the priority date of the application is the date the application was filed.
 2. If the Director determines that the application was not complete or correct when filed because of minor deficiencies, the Director shall notify the applicant of the deficiencies in writing and give the applicant 30 days to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within 30 days after the date of the notice, the priority date of the application is the date the application was filed.
 3. If the Director determines that the application was not complete or correct when filed and that the deficiencies are not minor, the Director shall notify the applicant of the deficiencies and give the applicant at least 60 days to submit the necessary information to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within the time allowed by the Director, the priority date of the application is the date the applicant submits the necessary information to correct the deficiencies.
- F.** The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, 2025. If the Director approves a municipal provider's application, the Director shall calculate the annual amount of remedial groundwater use that is deemed consistent with the management goal of the AMA as follows:
1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.
 2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.
 3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
- G.** If the Director determines that remedial groundwater use by a municipal provider is consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, 2025.
- H.** If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:
1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
 2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, 2025.
- I.** A municipal provider that is using remedial groundwater that has been determined by the Director to be consistent with the management goal under subsection (F) or (H) of this Section may apply to the Director for an increase in the annual authorized volume of the approved remedial action project as follows:
1. The applicant shall submit an application on a form provided by the Director.
 2. The Director shall determine that the application is complete and correct if it contains all of the required information and the Director verifies that the information is accurate.
 3. If the Director determines that an application filed under this subsection is complete and correct, the Director shall assign a priority date to the application using the criteria in subsection (E) of this Section.
 4. The Director shall approve the application if the municipal provider submits information that demonstrates one of the following:
 - a. The annual authorized volume of the approved remedial action project has been increased in a con-

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

sent decree or other document approved by ADEQ or the EPA; or

- b. An increase is necessary to further the purpose of the approved remedial action project, and the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project.
5. If the Director approves the application, the Director shall determine the additional annual amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal of the active management area, using the criteria in subsections (F) and (G) of this Section. The Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal under this subsection in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
- J. Until January 1, 2025, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
 2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
 - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
 - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
 - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
 - d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
 - e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
 - f. The name and telephone number of a person the Department may contact regarding the exemption.
- K. A municipal provider withdrawing remedial groundwater that has been determined to be consistent with the management goal under subsection (F) or (H) of this Section or that is consistent with the management goal under subsection (J) of this Section shall meter the remedial groundwater withdrawals separately from groundwater withdrawn pursuant to another groundwater withdrawal authority. The municipal provider

shall include in its annual reports, filed under A.R.S. § 45-632, the amount of remedial groundwater withdrawn during the reporting year that is consistent with the management goal under this Section and the purposes for which the remedial groundwater was used.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-730. Repealed**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS**R12-15-801. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101, 45-402, and 45-591 and in R12-15-202, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Annular space" means the space between the outer well casing and the borehole wall. An annular space also means the space between an inner well casing and outer well casing.
2. "Aquifer" means an underground formation capable of yielding or transmitting usable quantities of water.
3. "Artesian aquifer" means an aquifer which is overlain by a confining formation and which contains groundwater under sufficient pressure for the water to rise above the top of the aquifer.
4. "Artesian well" means a well that penetrates an artesian aquifer.
5. "Bentonite" means a colloidal clay composed mainly of sodium montmorillonite, a hydrated aluminum silicate.
6. "Cap" means a tamper-resistant, watertight steel plate of at least one-quarter inch thickness on the top of all inside and outside casings of a well.
7. "Casing" means the tubing or pipe installed in the borehole during or after drilling to support the sides of the well and prevent caving.
8. "Confining formation" means the relatively impermeable geologic unit immediately overlying an artesian aquifer.
9. "Consolidated formation" means a naturally occurring geologic unit through or into which a well is drilled, having a composition, density, and thickness which will provide a natural hydrologic barrier.
10. "Department" means the Arizona Department of Water Resources.
11. "Director" means the Director of the Arizona Department of Water Resources.
12. "Drilling card" means a card which is issued by the Director to the well drilling contractor or single well licensee designated in the notice of intent or permit, authorizing the well drilling contractor or licensee to drill the specific well or wells in the specific location as noticed or permitted.
13. "Exploration well" means a well drilled in search of geophysical, mineralogical or geotechnical data.

ATTACHMENT A6



Fwd: Rulemaking moratorium exemption approval - ADWR expedited rulemaking for Licensing Timeframes, Assured and Adequate Water Supply, Well Construction, and Dam Saftey

1 message

----- Forwarded message -----

From: **Chuck Podolak** <cpodolak@az.gov>

Date: Thu, May 20, 2021 at 12:07 PM

Subject: Rulemaking moratorium exemption approval - ADWR expedited rulemaking for Licensing Timeframes, Assured and Adequate Water Supply, Well Construction, and Dam Saftey

To: Tom Buschatzke <tbuschatzke@azwater.gov>, Ken Slowinski <kcslowinski@azwater.gov>

Director Buschatzke,

I am sending this message after having reviewed the attached revised request by the Arizona Department of Water Resources (Department), to initiate expedited rulemaking in order to amend licensing timeframes, assured and adequate water supply rules, well construction rules, and dam safety rules in 12 A.A.C. Chapter 15 without adding any additional rules.

I understand this request has been submitted to make updates that were identified in a recent Fire-Year Rule Review, and two recently-passed bills (SB 1274 and SB1366) by the Arizona Legislature. The rulemaking will remove outdated references in the rules, provide more certainty to applicants by establishing additional licensing timeframes for the Department, and reduce disincentives for revising assured and adequate water supply applications. These rules will reduce the regulatory burden on the public. I believe that this request meets the criteria for an exemption to the rulemaking moratorium set forth in Executive Order 2020-02 under criteria (1)(b) and (1)(f).

Furthermore, because the proposed rulemaking will not add additional rules, the requirement in criteria (2) of Executive Order 2020-02 for submission of rules recommended for elimination does not apply.

Based on the authority provided from Gretchen Conger, I am hereby approving the expedited rulemaking exemption so the Department can proceed.

I am available for any questions you may have.

Chuck Podolak
Natural Resources Policy Advisor
Office of Governor Doug Ducey
1700 W Washington St, Suite 800
Phoenix, AZ 85007
O: 602.542.1782
C: 602.769.7566
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DOUGLAS A. DUCEY
Governor



THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007
602.771.8500
azwater.gov

May 20, 2021

Charles Podolak
Natural Resources Policy Advisor, Office of the Governor
1700 W. Washington
Phoenix, AZ 85007-2888

Re: Request for Exemption from Rulemaking Moratorium to Conduct Rulemakings related to Licensing Timeframes, Assured and Adequate Water Supply, Well Construction and Dam Safety

Dear Mr. Podolak,

Pursuant to Executive Order 2021-02, paragraph 1 the Arizona Department of Water Resources (Department) requests approval to conduct rulemakings related to the Department's licensing timeframes, the assured and adequate water supply program, well construction standards and dam safety requirements. The Department requests approval to conduct these rulemakings as expedited rulemakings pursuant to A.R.S. § 41-1027 because the rulemakings will not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and the rulemakings will comply with one or more of the criteria set forth in A.R.S. § 41-1027(A). A description of each requested rulemaking, and the justification for the rulemaking, is set forth below.

I. Licensing Timeframe Rule (A.A.C. R12-15-401)

1. Amend Table A of R12-15-401 to add licensing timeframes for 15 applications for which the Department issues a license, but for which there are currently no licensing timeframes

a. Description

Each state agency is required by A.R.S. § 41-1073(A) to establish by rule an overall timeframe during which the agency will either grant or deny each type of license that it issues. An agency's rule regarding the overall time frame for each type of license must state separately the administrative completeness review time frame and the substantive review time frame. Pursuant to A.R.S. § 41-1077(A), if an agency does not issue a written notice granting or denying a license within the overall time frame, the agency must refund all fees charged for reviewing and acting on the application for the license and excuse

payment of any such fees that have not yet been paid. Pursuant to A.R.S. § 41-2077(B), except for license applications that are not subject to substantive review, the agency must also pay a penalty to the state general fund for each month after the expiration of the overall time frame until the agency grants or denies the license.

The Department's licensing timeframes are set forth in A.A.C. R12-15-401, Table A. In preparing its most recent Five-Year Rule Review Report to the Governor's Regulatory Review Council, the Department reviewed Table A and determined that the table does not include licensing timeframes for the following applications for which the Department issues a license:

- 1) Final petition to establish new service area right by a city, town or private water company.
- 2) Application for permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547.
- 3) Application for substitution of acres to allow irrigation with Central Arizona Project water in an active management area.
- 4) Application for approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right.
- 5) Application for re-issuance of drill card.
- 6) Application for assignment of Type A certificate of assured water supply.
- 7) Application for assignment of Type B certificate of assured water supply.
- 8) Application for classification of Type A certificate of assured water supply pursuant to R12-15-707.
- 9) Application for new certificate of assured water supply pursuant to R12-15-704(G).
- 10) Application for letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M).
- 11) Application for extinguishment of grandfathered right for extinguishment credits.
- 12) Application for conveyance of extinguishment credits.
- 13) Application for exemption from adequate water supply requirements pursuant to A.R.S. § 45-108.02.
- 14) Exemption from adequate water supply requirements pursuant to A.R.S. § 45-108.03.
- 15) Application for equipment license for weather control or cloud modification.

The Department requests permission to amend Table A of R12-15-401 to add licensing timeframes for the applications listed above. With this rule amendment, Table A will include licensing timeframes for all licenses issued by the Department.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Establishing licensing timeframes

for the 15 applications listed above will reduce or ameliorate a regulatory burden on the public by providing applicants and potential applicants greater certainty regarding the timeframe by which the Department will either grant or deny an application. This greater certainty will allow applicants to better plan activities associated with the licenses and will provide potential applicants a better understanding of when they can expect to receive a decision if they submit an application. The consequences imposed on the Department if it does not comply with the timeframes will make it more likely that applicants will receive a decision on an application within a reasonable period of time.

2. Amend Table A of R12-15-401 to lengthen the administrative review timeframe and shorten the substantive review timeframe for two existing licensing timeframes

a. Description

The Department has determined that the existing administrative review timeframe and substantive review timeframe for two of its adequate water supply licenses listed in Table A of R12-15-401 are out of balance because not enough time is allowed for the administrative review timeframe, while too much time is allowed for the substantive review timeframe. Those licenses are: (1) water report, listed in Table A, No. 73; and (2) analysis of adequate water supply, listed in Table A, No. 75. Additional time is needed in the administrative review timeframe to allow the Department sufficient time to review hydrologic studies submitted with the applications to determine whether they are complete. Adding additional time to the administrative review timeframe will allow the Department to reduce its substantive review of the applications by equivalent amount of time.

The Department requests approval to adjust the administrative review timeframe and substantive review timeframe for an analysis of adequate water supply by increasing the administrative review timeframe from 60 days to 90 days and reducing the substantive review timeframe from 60 days to 30 days. The Department requests approval to adjust the administrative review timeframe and substantive review timeframe for a water report by increasing the administrative review timeframe from 60 days to 75 days and reducing the substantive review timeframe from 60 days to 45 days. For both licenses, the overall timeframe of 120 days will not be changed.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Increasing the administrative review timeframes for the two licenses described above will provide the Department more time to review hydrologic studies submitted with the applications to determine if they contain are complete. This will likely reduce the information requested by the

Department during the substantive review timeframe for these applications, which will streamline the review process. The corresponding reduction of the substantive review timeframe will mean that there will be no increase in the overall timeframe.

3. Amend Table A of R12-15-401 to correct the statutory authorities cited for two licenses

a. Description

In preparing its most recent Five-Year Rule Review Report to the Governor's Regulatory Review Council, the Department discovered that the statutory authorities cited for the following two licenses in Table A of R12-15-401 are incorrect: (1) permit to appropriate water for an instream flow, listed in Table A, No. 5; and (2) reversal of substitution of acres irrigated with Central Arizona Project water, listed in Table A, No. 20. The Department requests approval to amend Table A to correct the statutory authorities for these licenses.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Correcting the statutory authorities for the licenses described above will eliminate confusion by the public regarding the authority under which the Department issues the licenses and will provide members of the public with accurate citations to the statutory authority should they wish to review the statutes.

II. Assured and Adequate Water Supply Rules (A.A.C. R12-15-701, et seq.)

1. Amend the Assured and Adequate Water Supply Rules to provide for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed

a. Description

In 2006, A.R.S. § 45-576(H) was amended to provide that on or before January 1, 2008, the Department's assured and adequate water supply (AAWS) rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system will be installed that meets the requirements of the rules adopted by the Department of Environmental Quality for gray water systems, and if the application is for a certificate of assured water supply, the land for which the certificate is sought must qualify as a member land in a conservation district pursuant to title 48, chapter 22, article 4. In 2007, the Department began working on a rule package that included an amendment to the AAWS rules to provide for a reduction in water demand if a gray water reuse system will be used in a subdivision. The Department put that rule package on hold to comply with the rulemaking moratorium that

became effective in January 2009. The Department requests approval to conduct a rulemaking to make this amendment to its AAWS rules.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Reducing water demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed will reduce the applicant's burden of demonstrating an assured water supply for the use because it will reduce the volume of water that the applicant must demonstrate is physically, continuously and legally available for at least 100 years and that is consistent with the management goal of the active management area (AMA).

2. Amend the Assured and Adequate Water Supply rules to include criteria for determining whether to grant an exemption from the adequate water supply requirements pursuant to A.R.S. § 45-108.03

a. Description

In 2007, the Arizona Legislature enacted SB 1575 (Laws 2007, Ch. 240) authorizing cities, towns and counties outside of AMAs to adopt regulations requiring developers of new subdivisions within their jurisdiction to demonstrate a 100-year adequate water supply in order to receive plat approval and a public report. SB 1575 also added a new section 45-108.03, which provides that a subdivider in a mandatory water adequacy jurisdiction may apply to the Director for an exemption from the adequate water supply requirements, and the Director shall grant the exemption, if both of the following apply: (1) the water supply project that will serve the subdivision will not be capable of serving the subdivision with sufficient water to meet its demands in a timely manner because either the physical works for delivering the water are not complete, but will be complete within 20 years, or the subdivision will be served with Colorado River water by a water provider that does not currently have the legal right to serve the water to the subdivision, but the water provider has an existing contract for the water and will have the legal right to serve the water to the subdivision within 20 years; and (2) the subdivision will have an adequate water supply when the construction of the physical works is complete or the water supply is legally available to serve the subdivision, and the interim water supply meets all the criteria for an adequate water supply except that the water supply will not be available for 100 years.

Section 10(B) of SB 1575 provides that the Director shall amend the AAWS rules to include criteria for making determinations pursuant to A.R.S. § 45-108.03. On December 19, 2008, the Department published a Notice of Proposed Rulemaking to amend the AAWS to include the criteria. However, prior to submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council, the Department put the rule package on hold to comply with

the rulemaking moratorium. The Department requests approval to conduct a rulemaking to make this amendment to its AAWS rules.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Amending the AAWS rules to include the criteria under which the Director will make determinations under A.R.S. § 45-108.03 will reduce the regulatory burden on the public by providing the public with certainty regarding the criteria that must be met to obtain an exemption from the water adequacy requirements under the statute. This will allow potential applicants to know whether they likely will qualify for the exemption and what criteria they must demonstrate in their applications to obtain an exemption. It will also allow the Department to process applications in a more efficient manner, which will reduce the time necessary for the Department to process the applications, as well as reducing the hourly fee charged to the applicants.

3. Amend the Assured and Adequate Water Supply rules to comply with the provisions of SB 1274 enacted in 2021

a. Description

During the 2021 Arizona legislative session, the Legislature passed SB 1274 (Laws 2021, Chapter 17). SB 1274 makes the following changes to Title 45, Arizona Revised Statutes, relating to the assured water supply program:

- 1) Adds a new section 45-576.08, which: (1) provides that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact of storage for an application to modify a designation of assured water supply in the Pinal AMA if certain criteria are met; (2) specifies that stored water recovered under certain conditions is deemed to be physically available for purposes of an assured water supply designation; and (3) defines “area of impact of storage,” “long-term storage credit” and “stored water.”
- 2) Amends A.R.S. § 45-579(A)(2) to provide that for purposes of an assignment of a certificate of assured water supply, a change in the total number of housing units or lots does not constitute a material change in a subdivision plat, plan or map if there is a reduction in the total water demand for the subdivision.
- 3) Adds a new section 45-579.01, which provides that for the purpose of determining whether changes to a plat for which a certificate of assured water supply has been issued are material under the Assured Water Supply Rules, the Director shall not consider any change in the number of housing units or lots if there is a reduction in the total water demand for the subdivision.

When SB 1274 becomes effective 90 days after the end of the 2021 Arizona legislative session, the AAWS rules will be inconsistent with the provisions of SB 1274 described above. ADWR requests approval to conduct a rulemaking to amend the AAWS rules to comply with the provisions of the bill.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(f) of Executive Order 2021-02, which allows a rulemaking to comply with a new state statutory requirement. The rulemaking is also eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Amending the AAWS to comply with 45-576.08 will reduce a regulatory burden on municipal water providers with a designation of assured water supply in the Pinal AMA and developers of new subdivisions that will be served water by those municipal water providers because it will allow the providers to extend their designations of assured water supply without the requirement to again demonstrate the physical availability of water that they previously demonstrated to be physically available. Amending the AAWS rules to comply with amended sections 45-579(A)(2) and new section 45-579.01 will reduce a regulatory burden on developers of subdivisions in all AMAs by allowing a previously issued certificate of assured water supply to remain in effect if the plat, plan or map for the subdivision is reconfigured to change the number of lots in the subdivision, as long as there is a reduction in the total water demand for the subdivision.

4. Amend the Assured and Adequate Water Supply rules to apply the provisions of A.R.S. § 45-576.08, as added by SB 1274, to the Phoenix, Prescott, Tucson and Santa Cruz AMAs

a. Description

As described above, SB 1274, which was passed by the Legislature in 2021, adds a new section 45-576.08 to Title 45 providing that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact of storage for an application to modify a designation of assured water supply in the Pinal AMA if certain criteria are met. Section 45-576.08 also specifies that stored water recovered under certain conditions is deemed to be physically available for purposes of an assured water supply designation and defines “area of impact of storage,” “long-term storage credit” and “stored water.” SB 1274 also added a new section 45-576.09 to Title 45, which provides that the Director may revise the AAWS rules to apply section 45-576.08 to other AMAs. The Department requests approval to conduct a rulemaking to apply the provisions of section 45-576.08 to the Phoenix, Prescott, Tucson and Santa Cruz AMAs.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public,

while achieving the same regulatory objective. Amending the AAWS to apply the provisions of 45-576.08 to the Phoenix, Prescott, Tucson and Santa Cruz AMAs will reduce a regulatory burden on municipal water providers with a designation of assured water supply in those AMAs and developers of new subdivisions that will be served water by those municipal water providers. It will allow the providers to modify or extend their designations of assured water supply without being required to again demonstrate the physical availability of water that was previously demonstrated to be physically available.

5. Amend the Assured and Adequate Water Supply rules to comply with SB 1366 enacted in 2021

a. Description

During the 2021 Arizona legislative session, the Legislature passed SB 1366 (Laws 2021, Chapter 272). SB 1366 amended Laws 1997, Chapter 287, § 52 to extend the time-period in which a specified volume of remediated groundwater withdrawn within the AMAs is deemed to be consistent with the management goal of the AMA in which the groundwater is withdrawn. The bill extends the end date of the time-period from 2025 to 2050. When SB 1366 becomes effective 90 days after the end of the legislative session, the Department's rule providing that remediated groundwater withdrawn in an AMA is consistent with the AMA's management goal (R12-15-729) will be inconsistent with Laws 1997, Chapter 287, § 52, as amended by SB 1366 because the rule provides an end date of January 1, 2025. ADWR requests approval to amend R12-15-729 to change the end date of the period in which remediated groundwater is consistent with the management goal of the AMA in which the groundwater is withdrawn from January 1, 2025 to January 1, 2050.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(f) of Executive Order 2021-02, which allows a rulemaking to comply with a new state statutory requirement. The rulemaking is also eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Amending R12-15-729 to change the end date of the time-period in which remediated groundwater withdrawn within an AMA is consistent with the management goal of the AMA from January 1, 2025 to January 1, 2050 will allow municipal water providers that qualify under the rule an additional 25 years to use remediated groundwater without the need to replenish the groundwater. This will reduce costs for the municipal water providers and will further incentivize the remediation of contaminated groundwater within the AMAs.

III. Well Construction Rules (A.A.C. R12-15-811 and R12-15-814)

a. Description

Two of the Department's well construction rules contain references to outdated specifications or engineering bulletins issued by other entities. R12-15-811(A) refers to outdated standard specifications for thermoplastic and steel casing issued by the American Society for Testing and Materials. R12-15-814 refers to outdated engineering bulletins with standards for disinfecting wells issued by the Arizona Department of Health Services. The Department requests approval to amend these two rules to update the references to the specifications issued by the American Society for Testing and Materials and the engineering bulletins issued by the Arizona Department of Health Services.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Amending R12-15-811(A) and R12-15-814 to update the references to the specifications and engineering bulletins issued by the American Society for Testing and Materials and the Arizona Department of Health Services will eliminate confusion by well drillers regarding the specifications and standards that they must follow to comply with the rules. It will assist them in complying with the rules by providing an accurate reference to the specifications and standards.

This rulemaking is also eligible for approval pursuant to paragraph 1(c) of Executive Order 2021-02, which allows a rulemaking to prevent a significant threat to the public health, peace or safety. The construction of wells using casing that does not comply with the most recent specifications issued by the American Society for Testing and Materials could cause defects in the casing, causing a risk of contamination to the aquifer or to the water withdrawn from the well. The disinfection of wells using disinfection standards that are outdated could result in a significant risk to the health of persons consuming water withdrawn from the well.

IV. Dam Safety Rules (R12-15-1224)

a. Description

R12-15-1224(A) provides that the owner of a dam shall immediately notify the Department and responsible authorities, including emergency management authorities, of a condition that may threaten the safety of the dam. R12-15-1224(A)(2) provides that in case of an emergency, the owner shall telephone the Arizona Department of Public Safety's (DPS) emergency number. The rule lists two phone numbers as DPS' emergency phone numbers. However, one of the phone numbers is no longer accurate. Rather than amending R12-15-1224(A)(2) to correct or delete the outdated phone number, the Department requests approval to amend the rule to remove both phone numbers. The Department does not believe it is necessary to include an emergency phone number for DPS in the rule and it is possible that any currently valid phone number listed in the rule could become outdated in the future.

b. Justification

This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02, which allows a rulemaking to reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Removing DPS' emergency phone numbers from R12-15-1224(A)(2) would eliminate confusion by dam owners if they were to call a phone number listed in the rule and the number was no longer a correct number. It would also save the dam owners the time spent calling an incorrect phone number. The rulemaking is also eligible for approval pursuant to paragraph 1(c) of Executive Order 2021-02, which allows a rulemaking to prevent a significant threat to the public health, peace or safety. If the rule were to contain an incorrect DPS emergency phone number, a dam owner who attempted to use the number to reach DPS to report an emergency situation would be delayed in reaching DPS, which could result in a delay in the warning of persons near the dam of the emergency situation.

Pursuant to Executive Order 2021-02, paragraph 1, the Department requests approval to conduct the rulemakings described above. The Department further requests approval to conduct the rulemakings as expedited rulemakings pursuant to A.R.S. § 41-1027. If the rulemakings are approved, the Department will amend its existing rules and will not adopt any new rules. For that reason, paragraph 3 of Executive Order 2021-02 does not apply. That paragraph requires a state agency that submits a rulemaking request to recommend for consideration at least three existing rules to eliminate for every one additional rule requested by the agency.

If you have any questions regarding this request, please contact Ken Slowinski, the Department's Chief Counsel, at 602-771-8474. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Buschatzke", with a long horizontal flourish extending to the right.

Thomas Buschatzke
Director

ATTACHMENT A7



Sharon Scantlebury <sscantlebury@azwater.gov>

Fwd: re rulemaking request

1 message

Kenneth Slowinski <kcslowinski@azwater.gov>
To: Sharon Scantlebury <sscantlebury@azwater.gov>

Mon, Jan 24, 2022 at 9:25 AM

----- Forwarded message -----

From: **Tom Buschatzke** <tbuschatzke@azwater.gov>
Date: Fri, Jan 21, 2022 at 3:50 PM
Subject: Fwd: re rulemaking request
To: Emily Petrick <epetrick@azwater.gov>, Kenneth C. Slowinski <kcslowinski@azwater.gov>

FYI

----- Forwarded message -----

From: **Buchanan Davis** <bdavis@az.gov>
Date: Fri, Jan 21, 2022 at 3:46 PM
Subject: Re: re rulemaking request
To: Tom Buschatzke <tbuschatzke@azwater.gov>
CC: Tony Hunter <thunter@az.gov>

Hi Director Buschatzke,

I appreciate the information on this proposed rulemaking. You have my approval to seek Final Approval in amending your agency rules relating to Assured and Adequate Water Supply. Let me know if you have any questions.

Thank you!

Buchanan Davis | Office of Arizona Governor Doug Ducey

Policy Advisor, Natural Resources

C. (928) 369-6926

O. (602) 542-1782

www.azgovernor.gov

On Wed, Jan 19, 2022 at 8:47 AM Tom Buschatzke <tbuschatzke@azwater.gov> wrote:
| as we discussed

DOUGLAS A. DUCEY
Governor



THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007
602.771.8500
azwater.gov

January 19, 2022

Buchanan Davis
Natural Resources Policy Advisor, Office of the Governor
1700 W. Washington
Phoenix, AZ 85007-2888

Sent via email

Re: Request for Final Approval to Amend Rules Relating to Assured and Adequate Water Supply

Dear Mr. Davis,

On May 20, 2021, Chuck Podolak, the former Natural Resources Policy Advisor to Governor Ducey, approved the Department of Water Resources' (Department) request to make amendments to its rules relating to Assured and Adequate Water Supply. A copy of Mr. Podolak's email approving the request is enclosed. The Department initiated the expedited rulemaking proceeding on November 24, 2021, by posting the attached Notice of Proposed Rulemaking on its website and submitting the Notice to the Governor's Regulatory Review Council and the Arizona Secretary of State. The public comment period and hearing record closed on December 23, 2021, at 5:00 p.m.

Executive Order 2021-02, paragraph 2, provides that after the public comment period and the close of the rulemaking record, a State agency shall not submit proposed rules to the Governor's Regulatory Review Council without a written final approval from the Office of the Governor. The purpose of this letter is to request written final approval for the Department to make these rule amendments.

The rulemaking qualifies as an expedited rulemaking pursuant to A.R.S. § 41-1027 because all the proposed rule amendments implement, without material change, a course of action proposed in the Department's Five-Year Rule Review Report approved by the Governor's Regulatory Review Council on June 1, 2021. Additionally, the proposed rule amendments will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. A description of each proposed rule amendment and a justification for approval of each rule amendment under Executive Order 2021-02 is set forth below.

1. Description: As required by A.R.S. § 45-576(H), the Department is proposing amendments to R12-15- 704 to allow a reduction in the estimated water demand for a subdivision enrolled as a member land in the CAGR D if gray water reuse systems will be installed in the subdivision. The Department is also proposing amendments to R12-15-710 to allow a reduction in the estimated water demand if the designation applicant will serve customers who install gray water reuse systems. Unlike an applicant for a certificate of assured water supply, it is not a requirement that the designation applicant show membership in the CAGR D for demand to be reduced because of gray water reuse systems. This distinction is required by A.R.S. § 45-576(H).
Justification: These amendments are eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02 because they will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Reducing water demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed will reduce the applicant’s burden of demonstrating an assured water supply for the use because it will reduce the volume of water that the applicant must demonstrate is physically, continuously and legally available for at least 100 years and that is consistent with the management goal of the active management area (AMA).
2. Description: A.R.S. § 45-576.08, added by SB 1274 (Fifty-fifth Legislature, First Regular Session, 2021) provides that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact for an application to modify a designation of assured water supply in the Pinal Active Management Area if certain criteria are met. The Department is proposing to amend to R12-15-710 to provide the criteria under which the Director shall not review the physical availability of groundwater and stored water to be recovered outside the area of impact of storage for applicants seeking to modify a designation of assured water supply. The rule applies to all Active Management Areas.
Justification: This amendment is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02 because it will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Amending the Departments rules to apply the provisions of 45-576.08 to all AMAs and to provide the criteria under which the Director will not review the physical availability of groundwater and stored water to be recovered outside the area of impact of storage will reduce a regulatory burden on municipal water providers with a designation of assured water supply and developers of new subdivisions that will be served water by those municipal water providers. It will allow the providers to modify or extend their designations of assured water supply without being required to again demonstrate the physical availability of water that was previously demonstrated to be physically available.
3. Description: The Department is proposing to amend R12-15-708 to be consistent with A.R.S. § 45-579.01, which was added by SB 1274 (Fifty-fifth Legislature, First Regular Session, 2021). A.R.S. § 45- 579.01 provides that for the purpose of determining whether changes to a plat for which a certificate of assured water supply has been issued are material, the Director shall not consider any change in the number of housing units or lots if there is a reduction in the total demand for the subdivision. The Department is proposing to amend R12-15-708 to provide that

an increase in the total number of housing units or lots constitutes a material plat change only if the water demand for the revised plat is equal to or greater than the water demand for the original plat.

Justification: This amendment is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02 because it will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. The amendment will reduce a regulatory burden on developers of subdivisions in AMAs by allowing a previously issued certificate of assured water supply to remain in effect if the plat, plan or map for the subdivision is reconfigured to change the number of lots in the subdivision, as long as there is a reduction in the total water demand for the subdivision.

4. Description: The Department is proposing to amend R12-15-713 to provide criteria under which the Director will determine whether to grant an exemption from the adequate water supply requirements pursuant to A.R.S. § 45-108.03. The first proposed change provides an exemption for proposed subdivisions where the municipal provider currently has an entitlement to Colorado River water, does not currently have the legal right to serve the water to the subdivision, but will have the legal right to serve Colorado River water to the subdivision within 20 years. The second proposed change is to provide an application for an exemption for proposed subdivisions where the physical works for delivering water to the subdivision are not complete but are under construction and will be completed within 20 years.

Justification: This rulemaking is eligible for approval pursuant to paragraph 1(b) of Executive Order 2021-02 because it will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Adding the criteria under which the Director will make determinations under A.R.S. § 45-108.03 will reduce the regulatory burden on the public by providing the public with certainty regarding the criteria that must be met to obtain an exemption from the water adequacy requirements under the statute. This will allow potential applicants to know whether they likely will qualify for the exemption and what criteria they must demonstrate in an application to obtain an exemption. It will also allow the Department to process applications in a more efficient manner, which will reduce the time necessary for the Department to process the applications, as well as reducing the hourly fee charged to applicants.

5. Description: The Department is proposing to amend R12-15-729 to make it consistent with SB 1366 (Fifty-fifth Legislature, First Regular Session, 2021) by extending the end date for which use of remedial groundwater by a municipal provider under R12-15-729 will be deemed consistent with the management goal to January 1, 2050.

Justification: This rulemaking is eligible for approval pursuant to paragraph 1(f) of Executive Order 2021- 02 because it complies with a new state statutory requirement. The rulemaking is also eligible for approval pursuant to paragraph 1(b) of Executive Order 2021- 02 because it will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Amending R12-15-729 to change the end date of the time-period in which remediated groundwater withdrawn within an AMA is consistent with the management goal of

the AMA from January 1, 2025 to January 1, 2050 will allow municipal water providers that qualify under the rule an additional 25 years to use remediated groundwater without the need to replenish the groundwater. This will reduce costs for the municipal water providers and will further incentivize the remediation of contaminated groundwater within the AMAs.

The Department received the following two comments on the proposed amendments during the public comment period:

1. The Arizona Municipal Water Users submitted a comment stating that it supports the proposed rulemaking.
2. The Town of Queen Creek (Queen Creek) submitted a comment regarding the Department's proposed amendment of R12-15-710. Queen Creek recommended that the rule also apply to applications for new designations of assured water supply relying on issued physical availability demonstrations (PAD). The Department did not make any changes in response to this comment because the statute authorizing the Department to make the rule amendment applies only to applications to modify a designation of assured water supply and the statute does not include a physical availability exemption based on the volume of groundwater included in a PAD.

The Department is proposing to amend its existing rules and not adopt any new rules. For that reason, paragraph 3 of Executive Order 2021-02 does not apply. That paragraph requires a state agency that submits a rulemaking request to recommend for consideration at least three existing rules to eliminate for every one additional rule requested by the agency.

If you have any questions regarding this request, please contact Ken Slowinski, the Department's Chief Counsel, at 602-771-8474. Thank you for your consideration of this request.

Sincerely,



Thomas Buschatzke
Director

Enclosures: Email from Chuck Podolak dated May 20, 2021
 Notice of Proposed Expedited Rulemaking

DEPARTMENT OF HEALTH SERVICES (Expedited Rulemaking)

Title 9, Chapter 10, Article 8

Amend: R9-10-802



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 14, 2022

SUBJECT: Arizona Department of Health Services

Amend: R9-10-802

Summary:

This expedited rulemaking from the Department of Health Services relates to rules in Title 9, Chapter 10, Article 8 regarding Assisted Living Facilities. The Department seeks to amend one rule, R9-10-802 (Supplemental Application Requirements) to comply with Laws 2019, Ch. 190. This law adds an exemption that removes architectural plans and specifications requirements and physical plant standard for the Arizona Pioneers' Home.

The Department received approval from the rulemaking moratorium to initiate this rulemaking on July 21, 2021 and final approval to submit it to the Council on February 9, 2022.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. The Department is conducting this expedited rulemaking to amend a rule to implement Laws 2019, Ch. 190, and amend an outdated rule. This expedited rulemaking qualifies under A.R.S. § 41-1027(A)(6) (“[a]mends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government”).

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

Yes. The Department cites both general and specific statutory authority for this rule.

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

No. This expedited rulemaking does not establish a new fee or contain a fee increase.

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

The Department did not receive any comments on this expedited rulemaking.

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

No. The Department did not make any changes to the rule between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

The Department indicates that federal law is not applicable to this rule.

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

The Department indicates that it believes a general permit is not applicable to these rules pursuant to A.R.S. § 41-1037(A)(3) (“[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements”) because it states that under A.R.S. § 36-407, “[a] person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining.”

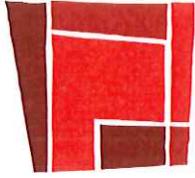
Upon review of the applicable statutes, Council staff agrees that the Department is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3).

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

The Department did not review or rely on a study in conducting this expedited rulemaking.

9. Conclusion

In this expedited rulemaking, the Department seeks to amend one rule to comply with a statutory change. This expedited rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6). If approved, this expedited rulemaking would be effective immediately upon the Department filing the Notice of Final Expedited Rulemaking and Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 10, 2022

VIA EMAIL: grrc@azdoa.gov

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

RE: Department of Health Services, 9 A.A.C. 10, Article 8 Expedited Rulemaking

Dear Ms. Sornsins:

1. The close of record date: October 14, 2021
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts requirements implementing Laws 2019, Ch. 190 and amends an outdated rule. The new requirements reduce regulatory burden for regulated person without changing the quality of health and safety for residents. The rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(6).
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The changes being made by the rulemaking are not related to a five-year-review report approved by the Council.

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

4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule, and
 - b. Statutory authority

Douglas A. Ducey | Governor Don Herrington | Intern Director

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at Teresa.Koehler@azdhs.gov.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people in Arizona. In order to ensure public health, safety, and welfare, A.R.S. §§ 36-405 and 36-406 require the Department to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code Title 9, Chapter 10, Article 8 for assisted living facilities. Laws 2019, Ch. 190, adds an exemption that removes architectural plans and specifications requirements and physical plant standard for the Arizona Pioneers' Home. After receiving an exception from the rulemaking moratorium established by Executive Order 2020-02, the Department will amend the rules to comply with Laws 2019, Ch. 190. The Department does not expect the expedited rulemaking will increase regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The proposed amendments 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. A summary of the economic, small business, and consumer impact:

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

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

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

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

No comments were received about this rulemaking.

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

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

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

A.R.S. § 36-407 prohibits a person from establishing, conducting, or maintaining “a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the Department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining.” A health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided. As such, a general permit is not applicable and is not used. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

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

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 rules. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall

state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 8. ASSISTED LIVING FACILITIES

Section

R9-10-802. Supplemental Application Requirements

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-802. Supplemental Application Requirements; Exemption

A. In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as an assisted living facility shall include in a Department-provided format:

1. Which of the following levels of assisted living services the applicant is requesting authorization to provide:
 - a. Supervisory care services,
 - b. Personal care services, or
 - c. Directed care services; and
2. Whether the applicant is requesting authorization to provide:
 - a. Adult day health care services, or
 - b. Behavioral health services other than behavioral care.

B. The Arizona Pioneers' Home is exempt from:

1. Architectural plans and specifications for a health care institution specified in A.A.C. R9-10-104; and
2. Physical plant codes and standards for a health care institution specified in A.A.C. R9-10-105(A)(5)(a).

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

2015, effective October 1, 2013 (Supp. 13-2).

(Supp. 19-3).

ARTICLE 8. ASSISTED LIVING FACILITIES**R9-10-801. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article, unless the context otherwise requires:

1. "Accept" or "acceptance" means:
 - a. An individual begins living in and receiving assisted living services from an assisted living facility; or
 - b. An individual begins receiving adult day health care services or respite care services from an assisted living facility.
2. "Assistant caregiver" means an employee or volunteer who helps a manager or caregiver provide supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
3. "Assisted living services" means supervisory care services, personal care services, directed care services, behavioral care, or ancillary services provided to a resident by or on behalf of an assisted living facility.
4. "Caregiver" means an individual who provides supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
5. "Manager" means an individual designated by a governing authority to act on behalf of the governing authority in the onsite management of the assisted living facility.
6. "Medication organizer" means a container that is designed to hold doses of medication and is divided according to date or time increments.
7. "Primary care provider" means a physician, a physician's assistant, or registered nurse practitioner who directs a resident's medical services.
8. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
9. "Service plan" means a written description of a resident's need for supervisory care services, personal care services, directed care services, ancillary services, or behavioral health services and the specific assisted living services to be provided to the resident.
10. "Termination of residency" or "terminate residency" means a resident is no longer living in and receiving assisted living services from an assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019

R9-10-802. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as an assisted living facility shall include in a Department-provided format:

1. Which of the following levels of assisted living services the applicant is requesting authorization to provide:
 - a. Supervisory care services,
 - b. Personal care services, or
 - c. Directed care services; and
2. Whether the applicant is requesting authorization to provide:
 - a. Adult day health care services, or
 - b. Behavioral health services other than behavioral care.

Historical Note

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R9-10-803. Administration

- A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an assisted living facility;
 2. Establish, in writing, an assisted living facility's scope of services;
 3. Designate, in writing, a manager who:
 - a. Is 21 years of age or older; and
 - b. Except for the manager of an adult foster care home, has either a:
 - i. Certificate as an assisted living facility manager issued under A.R.S. § 36-446.04(C), or
 - ii. A temporary certificate as an assisted living facility manager issued under A.R.S. § 36-446.06;
 4. Adopt a quality management program that complies with R9-10-804;
 5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
 6. Designate, in writing, an acting manager who has the qualifications established in subsection (A)(3), if the manager is:
 - a. Expected not to be present on the assisted living facility's premises for more than 30 calendar days, or
 - b. Not present on the assisted living facility's premises for more than 30 calendar days;

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the manager and identify the name and qualifications of the new manager;
 8. Ensure that a manager or caregiver who is able to read, write, understand, and communicate in English is on an assisted living facility's premises; and
 9. Ensure compliance with A.R.S. § 36-411.
- B. A manager:**
1. Is directly accountable to the governing authority of an assisted living facility for the daily operation of the assisted living facility and all services provided by or at the assisted living facility;
 2. Has the authority and responsibility to manage the assisted living facility; and
 3. Except as provided in subsection (A)(6), designates, in writing, a caregiver who is:
 - a. At least 21 years of age, and
 - b. Present on the assisted living facility's premises and accountable for the assisted living facility when the manager is not present on the assisted living facility premises.
- C. A manager shall ensure that policies and procedures are:**
1. Established, documented, and implemented to protect the health and safety of a resident that:
 - a. Cover job descriptions, duties, and qualifications, including required skills and knowledge, education, and experience for employees and volunteers;
 - b. Cover orientation and in-service education for employees and volunteers;
 - c. Include how an employee may submit a complaint related to resident care;
 - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
 - e. Except as provided in subsection (M), cover cardiopulmonary resuscitation training for applicable employees and volunteers, including:
 - i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the employee's or volunteer's ability to perform cardiopulmonary resuscitation;
 - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
 - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
 - iv. The documentation that verifies that the employee or volunteer has received cardiopulmonary resuscitation training;
 - f. Cover first aid training;
 - g. Cover how a caregiver will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
 - h. Cover staffing and recordkeeping;
 - i. Cover resident acceptance and resident rights;
 - j. Cover termination of residency, including:
 - i. Termination initiated by the manager of an assisted living facility, and
 - ii. Termination initiated by a resident or the resident's representative;
 - k. Cover the provision of assisted living services, including:
 - i. Coordinating the provision of assisted living services,
 - ii. Making vaccination for influenza and pneumonia available to residents according to A.R.S. § 36-406(1)(d), and
 - iii. Obtaining resident preferences for food and the provision of assisted living services;
 2. Available to employees and volunteers of the assisted living facility; and
 3. Reviewed at least once every three years and updated as needed.
- D. A manager shall ensure that the following are conspicuously posted:**
1. A list of resident rights;
 2. The assisted living facility's license;
 3. Current phone numbers of:
 - a. The unit in the Department responsible for licensing and monitoring the assisted living facility,
 - b. Adult Protective Services in the Department of Economic Security,
 - c. The State Long-Term Care Ombudsman, and
 - d. The Arizona Center for Disability Law; and
 4. The location at which a copy of the most recent Department inspection report and any plan of correction resulting from the Department inspection may be viewed.
- E. A manager shall ensure that, unless otherwise stated:**
1. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 2. When documentation or information is required by this Chapter to be submitted on behalf of an assisted living facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the assisted living facility.
- F. If a requirement in this Article states that a manager shall ensure an action or condition or sign a document:**
1. A governing authority or licensee may ensure the action or condition or sign the document and retain the responsibility to ensure compliance with the requirement in this Article;
 2. The manager may delegate ensuring the action or condition or signing the document to another individual, but the manager retains the responsibility to ensure compliance with the requirement in the Article; and
 3. If the manager delegates ensuring an action or condition or signing a document, the delegation is documented and

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the documentation includes the name of the individual to whom the action, condition, or signing is delegated and the effective date of the delegation.

- G.** A manager shall:
1. Not act as a resident's representative and not allow an employee or a family member of an employee to act as a resident's representative for a resident who is not a family member of the employee;
 2. If the assisted living facility administers personal funds accounts for residents and is authorized in writing by a resident or the resident's representative to administer a personal funds account for the resident:
 - a. Ensure that the resident's personal funds account does not exceed \$2,000;
 - b. Maintain a separate record for each resident's personal funds account, including receipts and expenditures;
 - c. Maintain the resident's personal funds account separate from any account of the assisted living facility; and
 - d. Provide a copy of the record of the resident's personal funds account to the resident or the resident's representative at least once every three months;
 3. Notify the resident's representative, family member, public fiduciary, or trust officer if the manager determines that a resident is incapable of handling financial affairs; and
 4. Except when a resident's need for assisted living services changes, as documented in the resident's service plan, ensure that a resident receives at least 30 calendar days written notice before any increase in a fee or charge.
- H.** A manager shall permit the Department to interview an employee, a volunteer, or a resident as part of a compliance survey or a complaint investigation.
- I.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not on the premises and not receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.
- J.** If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect or exploitation has occurred on the premises or while a resident is receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 2. Report the suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454;
 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (J)(1); and
 - c. The report in subsection (J)(2);
 4. Maintain the documentation in subsection (J)(3) for at least 12 months after the date of the report in subsection (J)(2);
 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (J)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
- K.** A manager shall provide written notification to the Department of a resident's:
1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
 2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency services provider.
- L.** If a resident is receiving services from a home health agency or hospice service agency, a manager shall ensure that:
1. The resident's medical record contains:
 - a. The name, address, and contact individual, including contact information, of the home health agency or hospice service agency;
 - b. Any information provided by the home health agency or hospice service agency; and
 - c. A copy of resident follow-up instructions provided to the resident by the home health agency or hospice service agency; and
 2. Any care instructions for a resident provided to the assisted living facility by the home health agency or hospice service agency are:
 - a. Within the assisted living facility's scope of services,
 - b. Communicated to a caregiver, and
 - c. Documented in the resident's service plan.
- M.** A manager of an assisted living home may establish, in policies and procedures, requirements that a caregiver obtains and provides documentation of cardiopulmonary resuscitation training specific to adults, which includes a demonstration of the caregiver's ability to perform cardiopulmonary resuscitation, from one of the following organizations:
1. American Red Cross,
 2. American Heart Association, or
 3. National Safety Council.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-803 renumbered to R9-10-804; new Section R9-10-803 made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final

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rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-804. Quality Management

A manager shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
 - a. A method to identify, document, and evaluate incidents;
 - b. A method to collect data to evaluate services provided to residents;
 - c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
 - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
 - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
 - a. An identification of each concern about the delivery of services related to resident care, and
 - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-804 renumbered from R9-10-803 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-805. Contracted Services

A manager shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency and (A)(1)(a)(i)(1) amended effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days

(Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-806. Personnel

A. A manager shall ensure that:

1. A caregiver:
 - a. Is 18 years of age or older; and
 - b. Provides documentation of:
 - i. Completion of a caregiver training program approved by the Department or the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers;
 - ii. For supervisory care services, employment as a manager or caregiver of a supervisory care home before November 1, 1998;
 - iii. For supervisory care services or personal care services, employment as a manager or caregiver of a supportive residential living center before November 1, 1998; or
 - iv. For supervisory care services, personal care services, or directed services, one of the following:
 - (1) A nursing care institution administrator's license issued by the Board of Examiners;
 - (2) A nurse's license issued to the individual under A.R.S. Title 32, Chapter 15;
 - (3) Documentation of employment as a manager or caregiver of an unclassified residential care institution before November 1, 1998; or
 - (4) Documentation of sponsorship of or employment as a caregiver in an adult foster care home before November 1, 1998;
2. An assistant caregiver:
 - a. Is 16 years of age or older, and
 - b. Interacts with residents under the supervision of a manager or caregiver;
3. The qualifications, skills, and knowledge required for a caregiver or assistant caregiver:
 - a. Are based on:
 - i. The type of assisted living services, behavioral health services, or behavioral care expected to be provided by the caregiver or assistant caregiver according to the established job description; and
 - ii. The acuity of the residents receiving assisted living services, behavioral health services, or behavioral care from the caregiver or assistant caregiver according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the caregiver or assistant caregiver to provide the expected assisted living services, behav-

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- ioral health services, or behavioral care listed in the established job description;
 - ii. The type and duration of education that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description; and
 - iii. The type and duration of experience that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services or behavioral care listed in the established job description;
4. A caregiver's or assistant caregiver's skills and knowledge are verified and documented:
 - a. Before the caregiver or assistant caregiver provides physical health services or behavioral health services, and
 - b. According to policies and procedures;
 5. An assisted living facility has a manager, caregivers, and assistant caregivers with the qualifications, experience, skills, and knowledge necessary to:
 - a. Provide the assisted living services, behavioral health services, behavioral care, and ancillary services in the assisted living facility's scope of services;
 - b. Meet the needs of a resident; and
 - c. Ensure the health and safety of a resident;
 6. At least one manager or caregiver is present and awake at an assisted living center when a resident is on the premises;
 7. Documentation is maintained for at least 12 months after the last date on the documentation of the caregivers and assistant caregivers working each day, including the hours worked by each;
 8. A manager, a caregiver, and an assistant caregiver, or an employee or a volunteer who has or is expected to have more than eight hours per week of direct interaction with residents, provides evidence of freedom from infectious tuberculosis:
 - a. On or before the date the individual begins providing services at or on behalf of the assisted living facility, and
 - b. As specified in R9-10-113;
 9. Before providing assisted living services to a resident, a caregiver or an assistant caregiver receives orientation that is specific to the duties to be performed by the caregiver or assistant caregiver; and
 10. Before providing assisted living services to a resident, a manager or caregiver provides current documentation of first aid training and cardiopulmonary resuscitation training certification specific to adults.
- B.** A manager of an assisted living home shall ensure that:
1. An individual residing in an assisted living home, who is not a resident, a manager, a caregiver, or an assistant caregiver:
 - a. Either:
 - i. Complies with the fingerprinting requirements in A.R.S. § 36-411, or
 - ii. Interacts with residents only under the supervision of an individual who has a valid fingerprint clearance card; and
 - b. If the individual is 12 years of age or older, provides evidence of freedom from infectious tuberculosis as specified in R9-10-113;
 2. Documentation of compliance with the requirements in subsection (B)(1)(a) and evidence of freedom from infectious tuberculosis, if required under subsection (B)(1)(b), is maintained for an individual residing in the assisted living home who is not a resident, a manager, a caregiver, or an assistant caregiver;
 3. As part of the policies and procedures required in R9-10-803(C)(1)(h), a plan is established, documented, and implemented to ensure that the manager or a caregiver is available as back-up to provide assisted living services to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted living services; and
 4. At least the manager or a caregiver is present at an assisted living home when a resident is present in the assisted living home and:
 - a. Except for nighttime hours, the manager or caregiver is awake; and
 - b. If the manager or caregiver is not awake during nighttime hours:
 - i. The manager or caregiver can hear and respond to a resident needing assistance; and
 - ii. If the assisted living home is authorized to provide directed care services, policies and procedures are developed, documented, and implemented to establish a process for checking on a resident receiving directed care services during nighttime hours to ensure the resident's health and safety.
- C.** A manager shall ensure that a personnel record for each employee or volunteer:
1. Includes:
 - a. The individual's name, date of birth, and contact telephone number;
 - b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
 - c. Documentation of:
 - i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
 - ii. The individual's education and experience applicable to the individual's job duties;
 - iii. The individual's completed orientation and in-service education required by policies and procedures;
 - iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or in policies and procedures;
 - v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
 - vi. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(8);
 - vii. Cardiopulmonary resuscitation training, if required for the individual in this Article or policies and procedures;
 - viii. First aid training, if required for the individual in this Article or policies and procedures; and
 - ix. Documentation of compliance with the requirements in A.R.S. § 36-411(A) and (C);
 2. Is maintained:

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- a. Throughout the individual's period of providing services in or for the assisted living facility, and
 - b. For at least 24 months after the last date the individual provided services in or for the assisted living facility; and
3. For a manager, a caregiver, or an assistant caregiver who has not provided physical health services or behavioral health services at or for the assisted living facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-807. Residency and Residency Agreements

- A. Except as provided in R9-10-808(B)(2), a manager shall ensure that a resident provides evidence of freedom from infectious tuberculosis:
 1. Before or within seven calendar days after the resident's date of occupancy, and
 2. As specified in R9-10-113.
- B. A manager shall ensure that before or at the time of acceptance of an individual, the individual submits documentation that is dated within 90 calendar days before the individual is accepted by an assisted living facility and:
 1. If an individual is requesting or is expected to receive supervisory care services, personal care services, or directed care services:
 - a. Includes whether the individual requires:
 - i. Continuous medical services,
 - ii. Continuous or intermittent nursing services, or
 - iii. Restraints; and
 - b. Is dated and signed by a:
 - i. Physician,
 - ii. Registered nurse practitioner,
 - iii. Registered nurse, or
 - iv. Physician assistant; and
 2. If an individual is requesting or is expected to receive behavioral health services, other than behavioral care, in addition to supervisory care services, personal care services, or directed care services from an assisted living facility:
 - a. Includes whether the individual requires continuous behavioral health services, and
 - b. Is signed and dated by a behavioral health professional.
- C. A manager shall not accept or retain an individual if:
 1. The individual requires continuous:
 - a. Medical services;
 - b. Nursing services, unless the assisted living facility complies with A.R.S. § 36-401(C); or
 - c. Behavioral health services;
 2. The primary condition for which the individual needs assisted living services is a behavioral health issue;
 3. The services needed by the individual are not within the assisted living facility's scope of services and a home health agency or hospice service agency is not involved in the care of the individual;
 4. The assisted living facility does not have the ability to provide the assisted living services needed by the individual; or
 5. The individual requires restraints, including the use of bedrails.
- D. Before or at the time of an individual's acceptance by an assisted living facility, a manager shall ensure that there is a documented residency agreement with the assisted living facility that includes:
 1. The individual's name;
 2. Terms of occupancy, including:
 - a. Date of occupancy or expected date of occupancy,
 - b. Resident responsibilities, and
 - c. Responsibilities of the assisted living facility;
 3. A list of the services to be provided by the assisted living facility to the resident;
 4. A list of the services available from the assisted living facility at an additional fee or charge;
 5. For an assisted living home, whether the manager or a caregiver is awake during nighttime hours;
 6. The policy for refunding fees, charges, or deposits;
 7. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the resident's service plan;
 8. The policy and procedure for an assisted living facility to terminate residency;
 9. The complaint process; and
 10. The manager's signature and date signed.
- E. Before or within five working days after a resident's acceptance by an assisted living facility, a manager shall obtain on the documented agreement, required in subsection (D), the signature of one of the following individuals:
 1. The resident,
 2. The resident's representative,
 3. The resident's legal guardian, or
 4. Another individual who has been designated by the individual under A.R.S. § 36-3221 to make health care decisions on the individual's behalf.
- F. A manager shall:
 1. Before or at the time of an individual's acceptance by an assisted living facility, provide to the resident or resident's representative a copy of:
 - a. The residency agreement in subsection (D),
 - b. Resident's rights, and
 - c. The policy and procedure on health care directives; and
 2. Maintain the original of the residency agreement in subsection (D) in the resident's medical record.
- G. A manager may terminate residency of a resident as follows:
 1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in an assisted living facility;
 2. With a 14-calendar-day written notice of termination of residency:
 - a. For nonpayment of fees, charges, or deposit; or

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- b. Under any of the conditions in subsection (C); or
3. With a 30-calendar-day written notice of termination of residency, for any other reason.
- H.** A manager shall ensure that the written notice of termination of residency in subsection (G) includes:
1. The date of notice;
 2. The reason for termination;
 3. The policy for refunding fees, charges, or deposits;
 4. The deposition of a resident's fees, charges, and deposits; and
 5. Contact information for the State Long-Term Care Ombudsman.
- I.** A manager shall provide the following to a resident when the manager provides the written notice of termination of residency in subsection (G):
1. A copy of the resident's current service plan, and
 2. Documentation of the resident's freedom from infectious tuberculosis.
- J.** If an assisted living facility issues a written notice of termination of residency as provided in subsection (G) to a resident or the resident's representative because the resident needs services the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide, a manager shall ensure that the written notice of termination of residency includes a description of the specific services that the resident needs that the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide.
- Historical Note**
- Adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).
- R9-10-808. Service Plans**
- A.** Except as required in subsection (B), a manager shall ensure that a resident has a written service plan that:
1. Is completed no later than 14 calendar days after the resident's date of acceptance;
 2. Is developed with assistance and review from:
 - a. The resident or resident's representative,
 - b. The manager, and
 - c. Any individual requested by the resident or the resident's representative;
 3. Includes the following:
 - a. A description of the resident's medical or health problems, including physical, behavioral, cognitive, or functional conditions or impairments;
 - b. The level of service the resident is expected to receive;
- c. The amount, type, and frequency of assisted living services being provided to the resident, including medication administration or assistance in the self-administration of medication;
 - d. For a resident who requires intermittent nursing services or medication administration, review by a nurse or medical practitioner;
 - e. For a resident who requires behavioral care:
 - i. Any of the following that is necessary to provide assistance with the resident's psychosocial interactions to manage the resident's behavior:
 - (1) The psychosocial interactions or behaviors for which the resident requires assistance,
 - (2) Psychotropic medications ordered for the resident,
 - (3) Planned strategies and actions for changing the resident's psychosocial interactions or behaviors, and
 - (4) Goals for changes in the resident's psychosocial interactions or behaviors; and
 - ii. Review by a medical practitioner or behavioral health professional; and
 - f. For a resident who will be storing medication in the resident's bedroom or residential unit, how the medication will be stored and controlled;
4. Is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f):
- a. No later than 14 calendar days after a significant change in the resident's physical, cognitive, or functional condition; and
 - b. As follows:
 - i. At least once every 12 months for a resident receiving supervisory care services,
 - ii. At least once every six months for a resident receiving personal care services, and
 - iii. At least once every three months for a resident receiving directed care services; and
5. When initially developed and when updated, is signed and dated by:
- a. The resident or resident's representative;
 - b. The manager;
 - c. If a review is required in subsection (A)(3)(d), the nurse or medical practitioner who reviewed the service plan; and
 - d. If a review is required in subsection (A)(3)(e)(ii), the medical practitioner or behavioral health professional who reviewed the service plan.
- B.** For a resident receiving respite care services, a manager shall ensure that:
1. A written service plan is:
 - a. Based on a determination of the resident's current needs and:
 - i. Is completed no later than three working days after the resident's date of acceptance; or
 - ii. If the resident has a service plan in the resident's medical record that was developed within the previous 12 months, is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the resident's date of acceptance; and
 - b. If a significant change in the resident's physical, cognitive, or functional condition occurs while the resident is receiving respite care services, updated based on changes in the requirements in subsections

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- (A)(3)(a) through (f) within three working days after the significant change occurs; and
2. If the resident is not expected to be present in the assisted living facility for more than seven calendar days, the resident is not required to comply with the requirements in R9-10-807(A).
- C.** A manager shall ensure that:
1. A caregiver or an assistant caregiver:
 - a. Provides a resident with the assisted living services in the resident's service plan;
 - b. Is only assigned to provide the assisted living services the caregiver or assistant caregiver has the documented skills and knowledge to perform;
 - c. Provides assistance with activities of daily living according to the resident's service plan;
 - d. If applicable, suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living;
 - e. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's service plan;
 - f. Encourages a resident to participate in activities planned according to subsection (E); and
 - g. Documents the services provided in the resident's medical record; and
 2. A volunteer or an assistant caregiver who is 16 or 17 years of age does not provide:
 - a. Assistance to a resident for:
 - i. Bathing,
 - ii. Toileting, or
 - iii. Moving the resident's body from one surface to another surface;
 - b. Assistance in the self-administration of medication;
 - c. Medication administration; or
 - d. Nursing services.
- D.** A manager of an assisted living facility that is authorized to provide adult day health services shall ensure that the adult day health care services are provided as specified in R9-10-1113.
- E.** A manager shall ensure that:
1. Daily social, recreational, or rehabilitative activities are planned according to residents' preferences, needs, and abilities;
 2. A calendar of planned activities is:
 - a. Prepared at least one week in advance of the date the activity is provided,
 - b. Posted in a location that is easily seen by residents,
 - c. Updated as necessary to reflect substitutions in the activities provided, and
 - d. Maintained for at least 12 months after the last scheduled activity;
 3. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity; and
 4. Multiple media sources, such as daily newspapers, current magazines, internet sources, and a variety of reading materials, are available and accessible to a resident to maintain the resident's continued awareness of current news, social events, and other noteworthy information.
- F.** If a resident is not receiving assistance with the resident's psychosocial interactions under the direction of a behavioral health professional or any other behavioral health services at an assisted living facility, the resident is not considered to be receiving behavioral care or behavioral health services from the assisted living facility if the resident:
1. Is prescribed a psychotropic medication, or
 2. Is receiving directed care services and has a primary diagnosis of:
 - a. Dementia,
 - b. Alzheimer's disease-related dementia, or
 - c. Traumatic brain injury.
- Historical Note**
- Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).
- R9-10-809. Transport; Transfer**
- A.** Except as provided in subsection (B), a manager shall ensure that:
1. A caregiver or employee coordinates the transport and the services provided to the resident;
 2. According to policies and procedures:
 - a. An evaluation of the resident is conducted before and after the transport, and
 - b. Information from the resident's medical record is provided to a receiving health care institution; and
 3. Documentation includes:
 - a. If applicable, any communication with an individual at a receiving health care institution;
 - b. The date and time of the transport; and
 - c. If applicable, the name of the caregiver accompanying the resident during a transport.
- B.** Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
 2. Transportation provided for a resident by the resident or the resident's representative,
 3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
 4. A transport to another licensed health care institution in an emergency.
- C.** Except for a transfer of a resident due to an emergency, a manager shall ensure that:
1. A caregiver coordinates the transfer and the services provided to the resident;
 2. According to policies and procedures:
 - a. An evaluation of the resident is conducted before the transfer;
 - b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and

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- c. A caregiver explains risks and benefits of the transfer to the resident or the resident's representative; and
- 3. Documentation in the resident's medical record includes:
 - a. Communication with an individual at a receiving health care institution;
 - b. The date and time of the transfer;
 - c. The mode of transportation; and
 - d. If applicable, the name of the caregiver accompanying the resident during a transfer.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-809 renumbered to R9-10-812; new Section R9-10-809 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). R9-10-809(E) reflects a corrected reference to Article 14 from Article 4 (05-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-810. Resident Rights

- A. A manager shall ensure that, at the time of acceptance, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C).
- B. A manager shall ensure that:
 - 1. A resident is treated with dignity, respect, and consideration;
 - 2. A resident is not subjected to:
 - a. Abuse;
 - b. Neglect;
 - c. Exploitation;
 - d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;
 - g. Sexual assault;
 - h. Seclusion;
 - i. Restraint;
 - j. Retaliation for submitting a complaint to the Department or another entity; or
 - k. Misappropriation of personal and private property by the assisted living facility's manager, caregivers, assistant caregivers, employees, or volunteers; and
 - 3. A resident or the resident's representative:
 - a. Is informed of the following:
 - i. The policy on health care directives, and
 - ii. The resident complaint process;
 - b. Consents to photographs of the resident before the resident is photographed, except that a resident may be photographed when accepted as a resident by an assisted living facility for identification and administrative purposes;

- c. Except as otherwise permitted by law, provides written consent before the release of information in the resident's:
 - i. Medical record, or
 - ii. Financial records;
- d. May:
 - i. Request or consent to relocation within the assisted living facility; and
 - ii. Except when relocation is necessary based on a change in the resident's condition as documented in the resident's service plan, refuse relocation within the assisted living facility;
- e. Has access to the resident's records during normal business hours or at a time agreed upon by the resident or resident's representative and the manager; and
- f. Is informed of:
 - i. The rates and charges for services before the services are initiated;
 - ii. A change in rates or charges at least 30 calendar days before the change is implemented, unless the change in rates or charges results from a change in services; and
 - iii. A change in services at least 30 calendar days before the change is implemented, unless the resident's service plan changes.

C. A resident has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive assisted living services that support and respect the resident's individuality, choices, strengths, and abilities;
3. To receive privacy in:
 - a. Care for personal needs;
 - b. Correspondence, communications, and visitation; and
 - c. Financial and personal affairs;
4. To maintain, use, and display personal items unless the personal items constitute a hazard;
5. To choose to participate or refuse to participate in social, recreational, rehabilitative, religious, political, or community activities;
6. To review, upon written request, the resident's own medical record;
7. To receive a referral to another health care institution if the assisted living facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
8. To choose to access services from a health care provider, health care institution, or pharmacy other than the assisted living facility where the resident is residing and receiving services or a health care provider, health care institution, or pharmacy recommended by the assisted living facility;
9. To participate or have the resident's representative participate in the development of, or decisions concerning, the resident's service plan; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pur-

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suant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-810 renumbered to R9-10-813; new Section R9-10-810 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-811. Medical Records**A.** A manager shall ensure that:

1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
 - a. Only recorded by an individual authorized by policies and procedures to make the entry;
 - b. Dated, legible, and authenticated; and
 - c. Not changed to make the initial entry illegible;
3. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
4. A resident's medical record is available to an individual:
 - a. Authorized according to policies and procedures to access the resident's medical record;
 - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
 - c. As permitted by law; and
5. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If an assisted living facility maintains residents' medical records electronically, a manager shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

C. A manager shall ensure that a resident's medical record contains:

1. Resident information that includes:
 - a. The resident's name, and
 - b. The resident's date of birth;
2. The names, addresses, and telephone numbers of:
 - a. The resident's primary care provider;
 - b. Other persons, such as a home health agency or hospice service agency, involved in the care of the resident; and
 - c. An individual to be contacted in the event of emergency, significant change in the resident's condition, or termination of residency;
3. If applicable, the name and contact information of the resident's representative and:
 - a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
 - b. If the resident's representative:

- i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
 - ii. Is a legal guardian, a copy of the court order establishing guardianship;
4. The date of acceptance and, if applicable, date of termination of residency;
 5. Documentation of the resident's needs required in R9-10-807(B);
 6. Documentation of general consent and informed consent, if applicable;
 7. Except as allowed in R9-10-808(B)(2), documentation of freedom from infectious tuberculosis as required in R9-10-807(A);
 8. A copy of resident's health care directive, if applicable;
 9. The resident's signed residency agreement and any amendments;
 10. Resident's service plan and updates;
 11. Documentation of assisted living services provided to the resident;
 12. A medication order from a medical practitioner for each medication that is administered to the resident or for which the resident receives assistance in the self-administration of the medication;
 13. Documentation of medication administered to the resident or for which the resident received assistance in the self-administration of medication that includes:
 - a. The date and time of administration or assistance;
 - b. The name, strength, dosage, and route of administration;
 - c. The name and signature of the individual administering or providing assistance in the self-administration of medication; and
 - d. An unexpected reaction the resident has to the medication;
 14. Documentation of the resident's refusal of a medication, if applicable;
 15. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
 16. If applicable, documentation of a determination by a medical practitioner that evacuation from the assisted living facility during an evacuation drill would cause harm to the resident;
 17. Documentation of notification of the resident of the availability of vaccination for influenza and pneumonia, according to A.R.S. § 36-406(1)(d);
 18. Documentation of the resident's orientation to exits from the assisted living facility required in R9-10-818(B);
 19. If a resident is receiving behavioral health services other than behavioral care, documentation of the determination in R9-10-813(3);
 20. If a resident is receiving behavioral care, documentation of the determination in R9-10-812(3);
 21. If applicable, for a resident who is unable to direct self-care, the information required in R9-10-815(F);
 22. Documentation of any significant change in a resident's behavior, physical, cognitive, or functional condition and the action taken by a manager or caregiver to address the resident's changing needs;
 23. Documentation of the notification required in R9-10-803(G) if the resident is incapable of handling financial affairs; and

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24. If the resident no longer resides and receives assisted living services from the assisted living facility:
- A written notice of termination of residency; or
 - If the resident terminated residency, the date the resident terminated residency.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-811 renumbered to R9-10-814; new Section R9-10-811 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-812. Behavioral Care

A manager shall ensure that for a resident who requests or receives behavioral care from the assisted living facility, a behavioral health professional or medical practitioner:

- Evaluates the resident:
 - Within 30 calendar days before acceptance of the resident or before the resident begins receiving behavioral care, and
 - At least once every six months throughout the duration of the resident's need for behavioral care;
- Reviews the assisted living facility's scope of services; and
- Signs and dates a determination stating that the resident's need for behavioral care can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989 (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989 (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-812 renumbered from R9-10-809 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-813. Behavioral Health Services

If an assisted living facility is authorized to provide behavioral health services other than behavioral care, a manager shall ensure that:

- Policies and procedures are established, documented, and implemented that cover when general consent and informed consent are required and by whom general consent and informed consent may be given;
- The behavioral health services:
 - Are provided under the direction of a behavioral health professional; and
 - Comply with the requirements:
 - For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
 - For an assessment, in R9-10-1011(B); and
- For a resident who requests or receives behavioral health services from the assisted living facility, a behavioral health professional:
 - Evaluates the resident within 30 calendar days before acceptance of the resident and at least once every six months throughout the duration of the resident's need for behavioral health services;
 - Reviews the assisted living facility's scope of services; and
 - Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

New Section renumbered from R9-10-810 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-814. Personal Care Services

- A manager of an assisted living facility authorized to provide personal care services shall not accept or retain a resident who:
 - Is unable to direct self-care;
 - Except as specified in subsection (B), is confined to a bed or chair because of an inability to ambulate even with assistance; or
 - Except as specified in subsection (C), has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.
- A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who is confined to a bed or chair because of an inability to ambulate even with assistance if:
 - The condition is a result of a short-term illness or injury; or
 - The following requirements are met at the onset of the condition or when the resident is accepted by the assisted living facility:
 - The resident or resident's representative requests that the resident be accepted by or remain in the assisted living facility;
 - The resident's primary care provider or other medical practitioner:
 - Examines the resident at the onset of the condition, or within 30 calendar days before acceptance, and at least once every six months

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- throughout the duration of the resident's condition;
- ii. Reviews the assisted living facility's scope of services; and
 - iii. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility; and
- c. The resident's service plan includes the resident's increased need for personal care services.
- C.** A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner, if the requirements in subsection (B)(2) are met.
- D.** A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who:
1. Is receiving nursing services from a home health agency or a hospice service agency; or
 2. Requires intermittent nursing services if:
 - a. The resident's condition for which nursing services are required is a result of a short-term illness or injury, and
 - b. The requirements of subsection (B)(2) are met.
- E.** A manager shall ensure that a bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available and accessible in a bedroom or residential unit being used by a resident receiving personal care services.
- F.** In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving personal care services includes:
1. Skin maintenance to prevent and treat bruises, injuries, pressure sores, and infections;
 2. Offering sufficient fluids to maintain hydration;
 3. Incontinence care that ensures that a resident maintains the highest practicable level of independence when toileting; and
 4. If applicable, the determination in subsection (B)(2)(b)(iii).
- G.** A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving personal care services unless the resident has an order from the resident's primary care provider or another medical practitioner for the non-prescription medication.
2. Has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.
- C.** In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving directed care services includes:
1. The requirements in R9-10-814(F)(1) through (3);
 2. If applicable, the determination in R9-10-814(B)(2)(b)(iii);
 3. Cognitive stimulation and activities to maximize functioning;
 4. Strategies to ensure a resident's personal safety;
 5. Encouragement to eat meals and snacks;
 6. Documentation:
 - a. Of the resident's weight, or
 - b. From a medical practitioner stating that weighing the resident is contraindicated; and
 7. Coordination of communications with the resident's representative, family members, and, if applicable, other individuals identified in the resident's service plan.
- D.** A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving directed care services unless the resident has an order from a medical practitioner for the non-prescription medication.
- E.** A manager shall ensure that:
1. A bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available in a bedroom being used by a resident receiving directed care services; or
 2. An assisted living facility has implemented another means to alert a caregiver or assistant caregiver to a resident's needs or emergencies.
- F.** A manager of an assisted living facility authorized to provide directed care services shall ensure that:
1. Policies and procedures are established, documented, and implemented that ensure the safety of a resident who may wander;
 2. There is a means of exiting the facility for a resident who does not have a key, special knowledge for egress, or the ability to expend increased physical effort that meets one of the following:
 - a. Provides access to an outside area that:
 - i. Allows the resident to be at least 30 feet away from the facility, and
 - ii. Controls or alerts employees of the egress of a resident from the facility;
 - b. Provides access to an outside area:
 - i. From which a resident may exit to a location at least 30 feet away from the facility, and
 - ii. Controls or alerts employees of the egress of a resident from the facility; or
 - c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the International Building Code incorporated by reference in R9-10-104.01; and
 3. A caregiver or an assistant caregiver complies with the requirements for incidents in R9-10-804 when a resident who is unable to direct self-care wanders into an area not designated by the governing authority for use by the resident.

Historical Note

New Section renumbered from R9-10-811 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-815. Directed Care Services

- A.** A manager shall ensure that a resident's representative is designated for a resident who is unable to direct self-care.
- B.** A manager of an assisted living facility authorized to provide directed care services shall not accept or retain a resident who, except as provided in R9-10-814(B)(2):
1. Is confined to a bed or chair because of an inability to ambulate even with assistance; or

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp.

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14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-816. Medication Services**A.** A manager shall ensure that:

1. Policies and procedures for medication services include:
 - a. Procedures for preventing, responding to, and reporting a medication error;
 - b. Procedures for responding to and reporting an unexpected reaction to a medication;
 - c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
 - d. Procedures for:
 - i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
 - ii. Monitoring a resident who self-administers medication;
 - e. Procedures for assisting a resident in procuring medication; and
 - f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. If a verbal order for a resident's medication is received from a medical practitioner by the assisted living facility:
 - a. The manager or a caregiver takes the verbal order from the medical practitioner,
 - b. The verbal order is documented in the resident's medical record, and
 - c. A written order verifying the verbal order is obtained from the medical practitioner within 14 calendar days after receiving the verbal order.
3. A medication administered to a resident:
 - a. Is administered by an individual under direction of a medical practitioner,
 - b. Is administered in compliance with a medication order, and
 - c. Is documented in the resident's medical record.

B. If an assisted living facility provides assistance in the self-administration of medication, a manager shall ensure that:

1. A resident's medication is stored by the assisted living facility;
2. The following assistance is provided to a resident:
 - a. A reminder when it is time to take the medication;
 - b. Opening the medication container or medication organizer for the resident;

- c. Observing the resident while the resident removes the medication from the container or medication organizer;
 - d. Except when a resident uses a medication organizer, verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
 - i. The resident taking the medication is the individual stated on the medication container label,
 - ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
 - iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label;
 - e. For a resident using a medication organizer, verifying that the resident is taking the medication in the medication organizer according to the schedule specified on the medical practitioner's order; or
 - f. Observing the resident while the resident takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse; and
 4. Assistance in the self-administration of medication provided to a resident:
 - a. Is in compliance with an order, and
 - b. Is documented in the resident's medical record.

D. A manager shall ensure that:

1. A current drug reference guide is available for use by personnel members, and
2. A current toxicology reference guide is available for use by personnel members.

E. A manager shall ensure that a resident's medication organizer is only filled by:

1. The resident;
2. The resident's representative;
3. A family member of the resident;
4. A personnel member of a home health agency or hospice service agency; or
5. The manager or a caregiver who has been designated and is under the direction of a medical practitioner, according to subsection (B)(2)(b).

F. When medication is stored by an assisted living facility, a manager shall ensure that:

1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented for:
 - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
 - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
 - c. A medication recall and notification of residents who received recalled medication; and
 - d. Storing, inventorying, and dispensing controlled substances.

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- G.** A manager shall ensure that a caregiver immediately reports a medication error or a resident's unexpected reaction to a medication to the medical practitioner who ordered the medication or, if the medical practitioner who ordered the medication is not available, another medical practitioner.
- H.** If medication is stored by a resident in the resident's bedroom or residential unit, a manager shall ensure that:
1. The medication is stored according to the resident's service plan; or
 2. If the medication is not being stored according to the resident's service plan, the resident's service plan is updated to include how the medication is being stored by the resident.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-817. Food Services

- A.** A manager shall ensure that:
1. A food menu:
 - a. Is prepared at least one week in advance,
 - b. Includes the foods to be served each day,
 - c. Is conspicuously posted at least one calendar day before the first meal on the food menu is served,
 - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
 - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
 2. Meals and snacks provided by the assisted living facility are served according to posted menus;
 3. If the assisted living facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the assisted living facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the assisted living facility;
 4. The assisted living facility is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
 5. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2015>;
 6. A resident is provided a diet that meets the resident's nutritional needs as specified in the resident's service plan;
 7. Water is available and accessible to residents at all times, unless otherwise stated in a medical practitioner's order; and
 8. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the provision of adaptive eating equipment or utensils, such as a plate guard, rocking fork, or assistive hand device, if not provided by the resident.
- B.** If the assisted living facility offers therapeutic diets, a manager shall ensure that:
1. A current therapeutic diet manual is available for use by employees, and
 2. The therapeutic diet is provided to a resident according to a written order from the resident's primary care provider or another medical practitioner.
- C.** A manager shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
 2. Food is protected from potential contamination;
 3. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a resident, such as cut, chopped, ground, pureed, or thickened;
 4. Potentially hazardous food is maintained as follows:
 - a. Foods requiring refrigeration are maintained at 41° F or below; and
 - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
 - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
 - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
 - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
 - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
 - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
 - vi. Leftovers are reheated to a temperature of at least 165° F;
 5. A refrigerator used by an assisted living facility to store food or medication contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
 6. Frozen foods are stored at a temperature of 0° F or below; and
 7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.
- D.** A manager of an assisted living center shall ensure that:
1. The assisted living center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
 2. A copy of the assisted living center's food establishment license or permit is maintained.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-818. Emergency and Safety Standards

- A.** A manager shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to caregivers and assistant caregivers, and, if necessary, implemented that includes:
 - a. When, how, and where residents will be relocated;
 - b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;

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- c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
- d. A plan for obtaining food and water for individuals present in the assisted living facility or the assisted living facility's relocation site during a disaster;
- 2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
- 3. Documentation of the disaster plan review required in subsection (A)(2) includes:
 - a. The date and time of the disaster plan review;
 - b. The name of each employee or volunteer participating in the disaster plan review;
 - c. A critique of the disaster plan review; and
 - d. If applicable, recommendations for improvement;
- 4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
- 5. An evacuation drill for employees and residents:
 - a. Is conducted at least once every six months; and
 - b. Includes all individuals on the premises except for:
 - i. A resident whose medical record contains documentation that evacuation from the assisted living facility would cause harm to the resident, and
 - ii. Sufficient caregivers to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
- 6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
 - a. The date and time of the evacuation drill;
 - b. The amount of time taken for employees and residents to evacuate the assisted living facility;
 - c. If applicable:
 - i. An identification of residents needing assistance for evacuation, and
 - ii. An identification of residents who were not evacuated;
 - d. Any problems encountered in conducting the evacuation drill; and
 - e. Recommendations for improvement, if applicable; and
- 7. An evacuation path is conspicuously posted in each hallway of each floor of the assisted living facility.
- B.** A manager shall ensure that:
 - 1. A resident receives orientation to the exits from the assisted living facility and the route to be used when evacuating the assisted living facility within 24 hours after the resident's acceptance by the assisted living facility, and
 - 2. The resident's orientation is documented.
- C.** A manager shall ensure that a first-aid kit is maintained in the assisted living facility in a location accessible to caregivers and assistant caregivers.
- D.** When a resident has an accident, emergency, or injury that results in the resident needing medical services, a manager shall ensure that a caregiver or an assistant caregiver:
 - 1. Immediately notifies the resident's emergency contact and primary care provider; and
 - 2. Documents the following:
 - a. The date and time of the accident, emergency, or injury;
 - b. A description of the accident, emergency, or injury;
 - c. The names of individuals who observed the accident, emergency, or injury;
 - d. The actions taken by the caregiver or assistant caregiver;
 - e. The individuals notified by the caregiver or assistant caregiver; and
 - f. Any action taken to prevent the accident, emergency, or injury from occurring in the future.
- E.** A manager of an assisted living center shall ensure that:
 - 1. Unless the assisted living center has documentation of having received an exception from the Department before October 1, 2013, in the areas of the assisted living center providing personal care services or directed care services:
 - a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and is in working order; and
 - b. A sprinkler system is installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, and is in working order;
 - 2. For the areas of the assisted living center providing only supervisory care services:
 - a. A fire alarm system and a sprinkler system meeting the requirements in subsection (E)(1) are installed and in working order, or
 - b. The assisted living center complies with the requirements in subsection (F);
 - 3. A fire inspection is conducted by a local fire department or the State Fire Marshal before licensing and according to the time-frame established by the local fire department or the State Fire Marshal;
 - 4. Any repairs or corrections stated on the fire inspection report are made; and
 - 5. Documentation of a current fire inspection is maintained.
- F.** A manager of an assisted living home shall ensure that:
 - 1. A fire extinguisher that is labeled as rated at least 2A-10-BC by the Underwriters Laboratories is mounted and maintained in the assisted living home;
 - 2. A disposable fire extinguisher is replaced when its indicator reaches the red zone;
 - 3. A rechargeable fire extinguisher:
 - a. Is serviced at least once every 12 months, and
 - b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
 - 4. Except as provided in subsection (G):
 - a. A smoke detector is:
 - i. Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
 - ii. Either battery operated or, if hard-wired into the electrical system of the assisted living home, has a back-up battery;
 - iii. In working order; and
 - iv. Tested at least once a month; and
 - b. Documentation of the test required in subsection (F)(4)(a)(iv) is maintained for at least 12 months after the date of the test;
 - 5. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the assisted living home; and

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6. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the assisted living home.
- G. A manager of an assisted living home may use a fire alarm system and a sprinkler system to ensure the safety of residents if the fire alarm system and sprinkler system:
 1. Are installed and in working order, and
 2. Meet the requirements in subsection (E)(1).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-819. Environmental Standards

- A. A manager shall ensure that:
 1. The premises and equipment used at the assisted living facility are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
 2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 3. Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
 5. Common areas:
 - a. Are lighted to ensure the safety of residents, and
 - b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
 6. Hot water temperatures are maintained between 95° F and 120° F in areas of an assisted living facility used by residents;
 7. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
 8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
 9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
 10. Oxygen containers are secured in an upright position;
 11. Poisonous or toxic materials stored by the assisted living facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
 12. Combustible or flammable liquids and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
 13. Equipment used at the assisted living facility is:
 - a. Maintained in working order;
- B. If a swimming pool is located on the premises, a manager shall ensure that:
 1. On a day that a resident uses the swimming pool, an employee:
 - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
 - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
 - b. Records the results of the water quality tests in a log that includes the date tested and test result;
 2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
 3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).

R9-10-820. Physical Plant Standards

- A. A manager shall ensure that an assisted living center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that:
 1. Are applicable to the level of services planned to be provided or being provided; and
 2. Were in effect on the date the assisted living facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

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- B.** A manager shall ensure that:
1. The premises and equipment are sufficient to accommodate:
 - a. The services stated in the assisted living facility's scope of services, and
 - b. An individual accepted as a resident by the assisted living facility;
 2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
 3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
 4. At least one bathroom is accessible from a common area and:
 - a. May be used by residents and visitors;
 - b. Provides privacy when in use; and
 - c. Contains the following:
 - i. At least one working sink with running water,
 - ii. At least one working toilet that flushes and has a seat,
 - iii. Toilet tissue for each toilet,
 - iv. Soap in a dispenser accessible from each sink,
 - v. Paper towels in a dispenser or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A window that opens or another means of ventilation;
 5. An outside activity space is provided and available that:
 - a. Is on the premises,
 - b. Has a hard-surfaced section for wheelchairs, and
 - c. Has an available shaded area;
 6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and
 7. The key to the door of a lockable bathroom, bedroom, or residential unit is available to a manager, caregiver, and assistant caregiver.
- C.** A manager shall ensure that:
1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
 2. For every eight residents there is at least one working bathtub or shower; and
 3. A resident bathroom provides privacy when in use and contains:
 - a. A mirror;
 - b. Toilet tissue for each toilet;
 - c. Soap accessible from each sink;
 - d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is not in a residential unit and used by more than one resident;
 - e. A window that opens or another means of ventilation;
 - f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
 - g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers.
- D.** A manager shall ensure that:
1. Each resident is provided with a sleeping area in a residential unit or a bedroom;
 2. For an assisted living home, a resident's sleeping area is on the ground floor of the assisted living home unless:
 - a. The resident is able to direct self-care;
 - b. The resident is ambulatory without assistance; and
 3. There are at least two unobstructed, usable exits to the outside from the sleeping area that the resident is capable of using;
 4. Except as provided in subsection (E), no more than two individuals reside in a residential unit or bedroom;
 5. A resident's sleeping area:
 - a. Is not used as a common area;
 - b. Is not used as a passageway to a common area, another sleeping area, or common bathroom unless the resident's sleeping area:
 - i. Was used as a passageway to a common area, another sleeping area, or common bathroom before October 1, 2013; and
 - ii. Written consent is obtained from the resident or the resident's representative;
 - c. Is constructed and furnished to provide unimpeded access to the door;
 - d. Has floor-to-ceiling walls with at least one door;
 - e. Has access to natural light through a window or a glass door to the outside; and
 - f. Has a window or door that can be used for direct egress to outside the building;
 6. If a resident's sleeping area is in a bedroom, the bedroom has:
 - a. For a private bedroom, at least 80 square feet of floor space, not including a closet or bathroom;
 - b. For a shared bedroom, at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom; and
 - c. A door that opens into a hallway, common area, or outdoors;
 7. If a resident's sleeping area is in a residential unit, the residential unit has:
 - a. Except as provided in subsection (E)(2), at least 220 square feet of floor space, not including a closet or bathroom, for one individual residing in the residential unit and an additional 100 square feet of floor space, not including a closet or bathroom, for each additional individual residing in the residential unit;
 - b. An individually keyed entry door;
 - c. A bathroom that provides privacy when in use and contains:
 - i. A working toilet that flushes and has a seat;
 - ii. A working sink with running water;
 - iii. A working bathtub or shower;
 - iv. Lighting;
 - v. A mirror;
 - vi. A window that opens or another means of ventilation;
 - vii. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
 - viii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in bathtubs and showers;
 - d. A resident-controlled thermostat for heating and cooling;
 - e. A kitchen area equipped with:
 - i. A working sink and refrigerator,
 - ii. A cooking appliance that can be removed or disconnected,
 - iii. Space for food preparation, and
 - iv. Storage for utensils and supplies; and
 - f. If not furnished by a resident:
 - i. An armchair, and
 - ii. A table where a resident may eat a meal; and
 8. If not furnished by a resident, each sleeping area has:

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- a. A bed, at least 36 inches in width and 72 inches in length, consisting of at least a frame and mattress that is clean and in good repair;
- b. Clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for the resident;
- c. Sufficient light for reading;
- d. Storage space for clothing;
- e. Individual storage space for personal effects; and
- f. Adjustable window covers that provide resident privacy.
- E.** A manager may allow more than two individuals to reside in a residential unit or bedroom if:
1. There is at least 60 square feet for each individual living in the bedroom;
 2. There is at least 100 square feet for each individual living in the residential unit; and
 3. The manager has documentation that the assisted living facility has been operating since before November 1, 1998, with more than two individuals living in the residential unit or bedroom.
- F.** If there is a swimming pool on the premises of the assisted living facility, a manager shall ensure that:
1. Unless the assisted living facility has documentation of having received an exception from the Department before October 1, 2013, the swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (F)(1)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:
 - i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground, and
 - iii. Is locked when the swimming pool is not in use;
 2. A life preserver or shepherd's crook is available and accessible in the swimming pool area; and
 3. Pool safety requirements are conspicuously posted in the swimming pool area.
- G.** A manager shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

ARTICLE 9. OUTPATIENT SURGICAL CENTERS**R9-10-901. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article, unless otherwise specified:

1. "Inpatient care" means postsurgical services provided in a hospital.
2. "Outpatient surgical services" means anesthesia and surgical services provided to a patient in an outpatient surgical center.
3. "Surgical suite" means an area of an outpatient surgical center that includes one or more operating rooms and one or more recovery rooms.

Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 3792, effective October 4, 2003 (Supp. 03-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-902. Administration

- A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an outpatient surgical center;
 2. Establish, in writing:
 - a. An outpatient surgical center's scope of services, and
 - b. Qualifications for an administrator;
 3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
 4. Grant, deny, suspend, or revoke clinical privileges of a physician and other members of the medical staff and delineate, in writing, the clinical privileges of each medical staff member, according to the medical staff bylaws;
 5. Adopt a quality management plan according to R9-10-903;
 6. Review and evaluate the effectiveness of the quality management plan at least once every 12 months;
 7. Designate in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
 - a. Expected not to be present on an outpatient surgical center's premises for more than 30 calendar days, or
 - b. Not present on an outpatient surgical center's premises for more than 30 calendar days; and
 8. Except as provided in subsection (A)(7), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B.** An administrator:
1. Is directly accountable to the governing authority of an outpatient surgical center for the daily operation of the outpatient surgical center and for all services provided by or at the outpatient surgical center;
 2. Has the authority and responsibility to manage the outpatient surgical center; and
 3. Except as provided in subsection (A)(7), designates, in writing, an individual who is present on an outpatient surgical center's premises and accountable for the outpatient surgical center when the administrator is not present on the outpatient surgical center's premises.
- C.** An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:

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- a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Include how a personnel member may submit a complaint relating to patient care;
 - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
 - e. Include a method to identify a patient to ensure that the patient receives services as ordered;
 - f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
 - g. Cover specific steps for:
 - i. A patient to file a complaint, and
 - ii. The outpatient surgical center to respond to a patient complaint;
 - h. Cover health care directives;
 - i. Cover medical records, including electronic medical records;
 - j. Cover a quality management program, including incident reports and supporting documentation; and
 - k. Cover contracted services;
2. Policies and procedures for medical services and nursing services provided by an outpatient surgical center are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Cover patient screening, admission, transfer, and discharge;
 - b. Cover the provision of medical services, nursing services, and health-related services in the outpatient surgical center's scope of services;
 - c. Include when general consent and informed consent are required;
 - d. Cover dispensing, administering, and disposing of medications;
 - e. Cover prescribing a controlled substance to minimize substance abuse by a patient;
 - f. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
 - g. Cover infection control; and
 - h. Cover environmental services that affect patient care;
 3. Policies and procedures are:
 - a. Available to personnel members, employees, volunteers, and students of the outpatient surgical center; and
 - b. Reviewed at least once every three years and updated as needed;
 4. A pharmacy maintained by the outpatient surgical center is licensed according to A.R.S. Title 32, Chapter 18;
 5. Pathology services are provided by a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the U.S. Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Act of 1967;
 6. If the outpatient surgical center meets the definition of "abortion clinic" in A.R.S. § 36-449.01, abortions and related services are provided in compliance with the requirements in Article 15 of this Chapter; and
 7. Unless otherwise stated:
 - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of an outpatient surgical center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the outpatient surgical center.

Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-903. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
 - a. A method to identify, document, and evaluate incidents;
 - b. A method to collect data to evaluate services provided to patients;
 - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
 - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
 - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
 - a. An identification of each concern about the delivery of services related to patient care, and
 - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-904. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Sec-

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

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act

15. Recruit and train personnel for state, local and district health departments.
 16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
 17. License and regulate health care institutions according to chapter 4 of this title.
 18. Issue or direct the issuance of licenses and permits required by law.
 19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
 20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high-risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
 21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
- C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

standards of performance established by the director of the department of health services.

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

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

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

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

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

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

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

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

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

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

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. The director may adopt rules regarding the collection of data from health care institutions.

E. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

D-3

DEPARTMENT OF HEALTH SERVICES (Expedited Rulemaking)
Title 9, Chapter 10, Article 18, Adult Behavioral Health Therapeutic Homes

Amend: R9-10-1802



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 10, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 18, Adult Behavioral Health Therapeutic Homes

Amend: R9-10-1802

Summary:

This expedited rulemaking from the Department of Health Services (Department) relates to a rule in Title 9, Chapter 10, Article 18, regarding Adult Behavioral Health Therapeutic Homes. In this expedited rulemaking, the Department seeks to amend one rule, R9-10-1802 (Supplemental Application Requirements) to comply with Laws 2019, Ch. 121. This law exempts adult behavioral health therapeutic homes from compliance with building code and zoning standards for a health care institution.

The Department received approval from the rulemaking moratorium to initiate this rulemaking on July 21, 2021 and final approval to submit it to the Council on February 9, 2022.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. The Department is conducting this expedited rulemaking to amend a rule to implement Laws 2019, Ch. 121, and amend an outdated rule. The rule amendment would reduce a regulatory burden by removing requirements that certain health care institutions

comply with building code and zoning standards. This expedited rulemaking qualifies under A.R.S. § 41-1027(A)(6) (“[a]mend or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government”).

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

Yes. The Department cites both general and specific statutory authority for this rule.

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

No. This expedited rulemaking does not establish a new fee or contain a fee increase.

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

The Department did not receive any comments on this expedited rulemaking.

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

No. The Department did not make any changes to the rule between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

The Department indicates that federal law is not applicable to this rule.

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

The Department indicates that it believes a general permit is not applicable to these rules pursuant to A.R.S. § 41-1037(A)(3) (“[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements”) because it states that under A.R.S. § 36-407, “[a] person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining.”

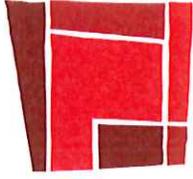
Upon review of the applicable statutes, Council staff agrees that the Department is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3).

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

The Department did not review or rely on a study in conducting this expedited rulemaking.

9. Conclusion

In this expedited rulemaking, the Department seeks to amend one rule to comply with a statutory change. This expedited rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6). If approved, this expedited rulemaking would be effective immediately upon the Department filing the Notice of Final Expedited Rulemaking and Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 10, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair

Governor's Regulatory Review Council

Arizona Department of Administration

100 N. 15th Avenue, Suite 305

Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 10, Article 18 Expedited Rulemaking

Dear Ms. Sornsins:

1. The close of record date: October 14, 2021
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts requirements implementing Laws 2019, Ch. 121 and amends an outdated rule. The new requirements reduce regulatory burden for regulated person without changing the quality of health and safety for residents. The rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(6).
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The changes being made by the rulemaking are not related to a five-year-review report approved by the Council.

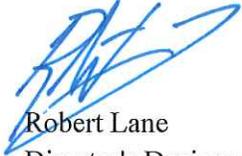
The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule, and
 - b. Statutory authority

Douglas A. Ducey | Governor Don Herrington | Intern Director

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at Teresa.koehler@azdhs.gov.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people in Arizona. In order to ensure public health, safety, and welfare, A.R.S. §§ 36-405 and 36-406 require the Department to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code Title 9, Chapter 10, Article 18 for adult behavioral health therapeutic homes. Laws 2019, Ch. 121, adds an exemption that removes requirements to comply with building code and zoning standards for health care institutions. After receiving an exception from the rulemaking moratorium established by Executive Order 2021-02, the Department amended the rules to comply with Laws 2019, Ch. 121. The Department does not expect the expedited rulemaking will increase regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The proposed amendments 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. A summary of the economic, small business, and consumer impact:

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

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

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

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

No comments were received about this rulemaking.

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

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

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

A.R.S. § 36-407 prohibits a person from establishing, conducting, or maintaining “a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining.” A health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided. As such, a general permit is not applicable and is not used. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

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

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 rules. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

Section

R9-10-1802. Supplemental Application Requirments

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

R9-10-1802. Supplemental Application Requirements; Exemption

A. In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, an applicant shall include, in a format provided by the Department:

1. The name of the backup provider; and
2. For the adult behavioral health therapeutic home's collaborating health care institution:
 - a. Name,
 - b. Address,
 - c. Class or subclass,
 - d. License number, and
 - e. Name and contact information for an individual assigned by the collaborating health care institution to monitor the adult behavioral health therapeutic home.

B. An adult behavioral health therapeutic home is exempt from complying with building codes or zoning standards required in 9 A.A.C. 10, Article 1 specified in A.R.S. § 36-421.

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

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act

15. Recruit and train personnel for state, local and district health departments.
 16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
 17. License and regulate health care institutions according to chapter 4 of this title.
 18. Issue or direct the issuance of licenses and permits required by law.
 19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
 20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high-risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
 21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
- C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

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

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

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

standards of performance established by the director of the department of health services.

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

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

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

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

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

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

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

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

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

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

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. The director may adopt rules regarding the collection of data from health care institutions.

E. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

D-4

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

Title 4, Chapter 46, Articles 1, 2, 3, 3.1, 4, 5, and 6

Amend: R4-46-101, R4-46-102, R4-46-106, R4-46-107, R4-46-201, R4-46-201.01,
R4-46-202.01, R4-46-203, R4-46-204, R4-46-209, R4-46-301, R4-46-301.01,
R4-46-302.01, R4-46-303.01, R4-46-304.01, R4-46-305.01, R4-46-306.01,
R4-46-307.01, R4-46-401, R4-46-402, R4-46-403, R4-46-404, R4-46-405, R4-46-406,
R4-46-408, R4-46-501, R4-46-502, R4-46-503, R4-46-504, R4-46-506, R4-46-507,
R4-46-508, R4-46-509, R-46-510, R4-46-511, R4-46-601



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 14, 2022

SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 4, Chapter 46, Articles 1, 2, 3, 3.1, 4, 5, and 6

Amend: R4-46-101, R4-46-102, R4-46-106, R4-46-107, R4-46-201,
R4-46-201.01, R4-46-202.01, R4-46-203, R4-46-204, R4-46-209,
R4-46-301, R4-46-301.01, R4-46-302.01, R4-46-303.01, R4-46-304.01,
R4-46-305.01, R4-46-306.01, R4-46-307.01, R4-46-401, R4-46-402,
R4-46-403, R4-46-404, R4-46-405, R4-46-406, R4-46-408, R4-46-501,
R4-46-502, R4-46-503, R4-46-504, R4-46-506, R4-46-507, R4-46-508,
R4-46-509, R4-46-510, R4-46-511, R4-46-601

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) relates to rules in Title 4, Chapter 46, regarding real estate appraisal. In this rulemaking, the Department is attempting to streamline the rules with the Department's governing statutes and the Department's regulatory functions regarding appraisers, appraisal management companies, education course providers, and property tax agents.

The Department is requesting the standard 60-day delayed effective date for this rulemaking. The Department received initial approval from the rulemaking moratorium to initiate this rulemaking on November 16, 2021 and final approval to submit it to the Council on January 19, 2022.

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

Yes. The Department cites both general and specific statutory authority for the rules.

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

No. The rulemaking does not establish a new fee or contain a fee increase. The Department indicates that fees included in the rulemaking are established in statute (A.R.S. § 32-3607).

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

The Department did not review or rely on a study in conducting this rulemaking.

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

The Department indicates that the primary goal of this rulemaking is not to change any conduct of appraisers, appraisal management companies, course providers or property tax agents. It states that the rulemaking is designed to bring the current rules in line with revised statutory sections and agency structure. It further states that the rulemaking does add a requirement for appraisal management companies to comply with the National Registry requirements, including the payment of fees. In addition, additional reporting requirements have been added to bring appraisal licensees in line with other licensees the Department regulates.

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

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the rulemaking, which is to effectively regulate appraisers, appraisal management companies, course owners, and tax property agents.

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

The Department does not anticipate any costs or benefits in implementing and enforcing the rulemaking and no political subdivision of this state is directly affected. It also does not anticipate that any additional costs will be imposed on appraisers or appraisal management companies in relation to the National Registry reporting requirements and fees because those requirements are already in statute. The Department does not expect any appreciable increase in either costs or benefits to private persons and consumers.

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

No. As the Department indicates in Item 10 of the Preamble, it made minor, non-substantive changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are “substantially different” under A.R.S. § 41-1025.

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

The Department did not receive any comments in conducting this rulemaking.

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

The Department states that the rules do not require a permit, and that the issuance of a permit is not technically feasible and would not meet the applicable statutory requirements.

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

In Item 12b of the Preamble, the Department explains how federal law is relevant to these rules. The Department states that the rules comply with applicable federal requirements and are not more stringent than federal law.

11. **Conclusion**

In this regular rulemaking, the Department is seeking to streamline the rules with its governing statutes and the Department’s functions as they relate to real estate appraisal. Council staff finds that the rulemaking would result in rules that are clearer, more concise, and more understandable. The Department is seeking the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



Director's Office
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

Douglas A. Ducey, Governor
Evan G. Daniels, Director

February 1, 2022

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Real Estate Appraisal Final Rulemaking

Dear Chairperson Sornsin:

Please find enclosed the Final Rulemaking for Real Estate Appraisal being submitted by the Arizona Department of Insurance and Financial Institutions, Financial Institutions Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The close of record date for the Notice of Proposed Rulemaking was January 16, 2022.
- b. This rulemaking does not relate to a five-year review report. Instead, the Department initiated this rulemaking to reflect structural changes made within the Department (the elimination of the position of "Superintendent") and to recapture some regulatory tools that it lost during the prior rulemaking.
- c. The rulemaking does not establish a new fee. The new fees included in the rulemaking are established by statute. (See, A.R.S. § 32-3607)
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No additional full-time employees are necessary to implement and enforce the rule. Consequently, no notification has been made to the Joint Legislative Budget Committee.
- h. The following documents are also submitted to the Council with this cover letter:
 - i. The Notice of Final Rulemaking;
 - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
 - iii. The materials incorporated by reference.
 - iv. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,



Evan G. Daniels
Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

**CHAPTER 46. DEPARTMENT OF FINANCIAL INSTITUTIONS – REAL ESTATE APPRAISAL
DIVISION**

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 1	Amend
R4-46- 101	Amend
R4-46-102	Amend
R4-46-106	Amend
R4-46-107	Amend
Article 2	Amend
R4-46-201	Amend
R4-46-201.01	Amend
R4-46-202.01	Amend
R4-46-203	Amend
R4-46-204	Amend
R4-46-209	Amend
Article 3	Amend
R4-46-301	Amend
Article 3.1	Amend
R4-46-301.01	Amend
R4-46-302.01	Amend
R4-46-303.01	Amend
R4-46-304.01	Amend
R4-46-305.01	Amend
R4-46-306.01	Amend
R4-46-307.01	Amend
Article 4	Amend
R4-46-401	Amend
R4-46-402	Amend
R4-46-403	Amend
R4-46-404	Amend
R4-46-405	Amend
R4-46-406	Amend
R4-46-408	Amend
Article 5	Amend
R4-46-501	Amend
R4-46-502	Amend

R4-46-503	Amend
R4-46-504	Amend
R4-46-505	Amend
R4-46-506	Amend
R4-46-507	Amend
R4-46-508	Amend
R4-46-509	Amend
R4-46-510	Amend
R4-46-511	Amend
Article 6	Amend
R4-46-601	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. § 32-3605(A)

Implementing statute: A.R.S. §§ 32-3605(B), 32-3625, 32-3631(A), and 32-3680

3. The effective date of the rule:

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

Not applicable.

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

Not applicable.

4. 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: 27 A.A.R. 2923, December 17, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 2891, December 17, 2021

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

Name: Mary E. Kosinski
Address: Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, Arizona 85007-2630
Telephone: (602)364-3476
E-mail: mary.kosinski@difi.az.gov
Web site: <https://difi.az.gov>

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

The Arizona Department of Insurance and Financial Institutions, Division of Financial Institutions ("Department") seeks to update the rules in Title 4, Chapter 46, A.A.C. R4-46-101 through and R4-46-601. Laws 2017, Chap. 334 (SB 1197) consolidated the former Board of Appraisal into the Arizona Department of Financial Institutions ("DFI"). In 2018 and 2019, the Department engaged in rulemaking that attempted to address changes in SB 1197. The rulemaking removed many redundant and inapplicable rules from Title 4, Chapter 46 (25 A.A.R. 1139, May 3, 2019); however, the changes created unanticipated regulatory issues for the DFI's enforcement of laws that apply to appraisers, appraisal management companies, education course providers, and property tax agents.

In July 2020, the DFI merged with the Arizona Department of Insurance. As a result, the former agencies became divisions of the Department.

In 2021, the Department ran legislation to bring the statutory sections governing real estate appraisal in line with the Department's new structure which eliminated the position of Superintendent. (Laws 2021, Chap. 356 (SB 1463)). This rulemaking attempts to synchronize the rules with the governing statutes and the Department's regulatory functions with regard to appraisers, appraisal management companies, education course providers and property tax agents. No changes are proposed for Section R4-46-407.

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 Department did not review any study relevant to the rule.

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

The rulemaking does not diminish a previous grant of authority granted to the Division.

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

Pursuant to A.R.S. § 41-1055(A)(1):

- The primary goal of this rulemaking is not to change any conduct of appraisers, appraisal management companies, course providers or property tax agents. Instead, it is designed to bring the current rules in line with the revised statutory sections and agency structure.
- The rulemaking does however add a requirement for appraisal management companies to comply with the National Registry requirements, including the payment of fees. Additional reporting requirements have been added to bring Appraisal licensees in line with other licensees regulated by the Department: Appraisers and property tax agents are now required to report criminal convictions and civil judgments based on fraud, misrepresentation, or deceit in the making of any appraisal (*see*, R4-46-209); and appraisal management companies are required to report adverse judgments by any state regulatory agency, or any professional or occupational credentialing authority against the regulated entity, the responsible person, any controlling person, or any person who owns 10% or more of the regulated entity (*see*, R4-46-403).

Pursuant to A.R.S. § 41-1055(A)(2):

- No additional costs are anticipated to be imposed on appraisers or appraisal management companies in association with the National Registry reporting and fees because those requirements are already in statute.
- The costs incurred by the additional reporting requirements for appraisers and appraisal management companies are unknown at this time. Licensees were encouraged to submit this information to the Department during the public comment period but no one submitted this information. The Department believes these costs will be minimal because the reporting requirement is only triggered by the occurrence of specific, rare events.

Pursuant to A.R.S. § 41-1055(A)(3):

- An economic, small business and consumer impact summary accompanies the submission of the Proposed Rulemaking to the Governor’s Regulatory Review Council.

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

No substantive changes have been made between the proposed rulemaking and the final rulemaking. However, the following non-substantive changes have been included in this Notice of Final Rulemaking:

- a. Section R46-4-101. Corrected reference in the definition for “Contested case” from A.R.S. § 41-1001(5) to 41-1001(6).
- b. Section R4-46-106(A). Corrected citations from “3619, and 3667” to “32-3619, and 32-3667.”
- c. Section R4-46-201(C). Corrected citations from “32-3612(A)(3)” to “32-3612(3)” and from “32-3612(A)(2)” to “32-3612(2).”
- d. Section R4-46-405(D)(1) through (3). Underlined as new language.

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

The Division received no comments on the proposed rulemaking.

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

No other matters prescribed by statute are applicable to the Appraisal Division or to any specific rule or class of rules.

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

The rule does not require a permit. The issuance of a general permit is not technically feasible and would not meet the applicable statutory requirements.

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 Appraisal Subcommittee of the Federal Financial Institutions Examination Council (“Appraisal Subcommittee”) monitors the requirements established by the Department for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions and for the registration and supervision of the operations and activities of appraisal management companies. 12 U.S.C. § 3332(a)(1). The Appraisal Subcommittee also maintains a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions and a national registry of appraisal management companies that are registered with and subject to supervision of a State appraiser certifying and licensing agency. 12 U.S.C. §§ 3332(a)(2) and (6).

Accordingly, the Department is required to transmit to the Appraisal Subcommittee an annual roster of individuals who have received a state certification or license to perform appraisals in federally related transactions, and to report on the issuance and renewal of licenses and certifications, sanctions, and disciplinary actions (including license or certification revocations and suspensions). The Department is also required to transmit reports of supervisory activities involving appraisal management companies, including investigations resulting in disciplinary action being taken. It also collects and transmits the fees established by the Appraisal Subcommittee. 12 U.S.C. § 3338(a).

The rule comports with these federal requirements and is not more stringent than the federal law.

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

No formal analysis has been submitted to the Appraisal Division that compares the rule’s impact of the competitiveness of business in this state to the impact of business in other states.

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

Section R4-46-201(B) incorporates the classification-specific qualification criteria established and updated January 1, 2022 by the Appraisal Qualifications Board (“AQB”).

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:

This rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. DEPARTMENT OF FINANCIAL INSTITUTIONS – REAL ESTATE APPRAISAL DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

R4-46-101. Definitions

R4-46-102. Powers of ~~Superintendent~~ Director

R4-46-106. Fees

R4-46-107. Procedures for Processing Applications

ARTICLE 2. REGISTRATION, LICENSURE, AND CERTIFICATION AS AN APPRAISER

Section

R4-46-201. Appraiser Qualification Criteria

R4-46-201.01. Application for Designation as a Supervisory Appraiser; Supervision of a Registered Trainee Appraiser

R4-46-202.01. Application for Licensure or Certification by Reciprocity

R4-46-203. Application for Non-resident Temporary Licensure or Certification

R4-46-204. Licensure and Certification Examinations

R4-46-209. Registration, License, or Certificate; Name Change; Conviction and Judgment Disclosure

ARTICLE 3. COMPLAINT INVESTIGATIONS

Section

R4-46-301. Complaints and Investigations; Complaint Resolution

**ARTICLE 3.1. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT
DIRECTOR**

Section

R4-46-301.01. Scope of Article

R4-46-302.01. Commencement of Proceedings; Notice of Hearing

R4-46-303.01. Answer to Notice of Hearing

R4-46-304.01. Filing; Service

R4-46-305.01. Stays

R4-46-306.01. Rehearing

R4-46-307.01. Settlement

ARTICLE 4. APPRAISAL MANAGEMENT COMPANIES

Section

R4-46-401. Application for Initial Registration

R4-46-402. Bond Required

R4-46-403. Change in Controlling Person or Agent for Service of Process; Notice of Adverse Action

R4-46-404. Application for Renewal Registration

R4-46-405. Certifications; National Registry Reporting

R4-46-406. Appeal for Waiver

R4-46-408. Voluntarily Relinquishing Registration

ARTICLE 5. COURSE APPROVAL

Section

R4-46-501. Course Approval Required; Definitions

R4-46-502. Approval of Distance-education Delivery Mechanism

R4-46-503. Course Owners

R4-46-504. Application for Course Approval

R4-46-505. Course Approval without Application

R4-46-506. Minimum Standards for Course Approval

R4-46-507. Secondary Providers

R4-46-508. Compliance Audit of Approved Courses

R4-46-509. Changes to an Approved Course

R4-46-510. Renewal of Course Approval

R4-46-511. Transfer of an Approved Course

ARTICLE 6. PROPERTY TAX AGENTS

Section

R4-46-601. Standards of Practice

ARTICLE 1. GENERAL PROVISIONS

R4-46-101. Definitions

The definitions in A.R.S. §§ 32-3601, 32-3651, and 32-3661 apply to this Chapter. Additionally, unless the context otherwise requires, in this Chapter:

“Accredited” means approved by an accrediting agency recognized by the Council for Higher Education Accreditation or the U.S. Secretary of Education.

“Administrative law judge” has the meaning stated at A.R.S. § 41-1092(1).

“AMC” means appraisal management company as defined at A.R.S. § 32-3661.

“Appealable agency action” has the meaning stated at A.R.S. § 41-1092(3).

“Appraisal practice” means valuation services performed by an individual acting as an appraiser, including but not limited to an appraisal or appraisal review.

“Appraiser” means an individual, other than a property tax agent as defined at A.R.S. § 32-3651, registered, licensed, or certified by the ~~Superintendent~~ Department to complete valuation assignments regarding real estate competently in a manner that is independent, impartial, and objective.

“AQB” means the Appraisal Qualifications Board as defined at A.R.S. § 32-3601.

“Assignment” means the valuation service that an appraiser provides as a consequence of an agreement between the appraiser and a client.

“Classroom education” means appraisal education delivered in a setting where there is no geographical separation between the instructor and student.

“Complaint” means a written allegation against a party.

“Conditional dismissal” means an agreement ~~between the Superintendent and the respondent~~, which allows the ~~Superintendent~~ Director to dismiss the complaint upon the respondent’s completion of a Department specified continuing education course.

“Contested case” has the meaning stated at A.R.S. § ~~41-1001(5)~~ 41-1001(6).

“Conviction” means a judgment by any state or federal court of competent jurisdiction in a criminal case, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based on a plea of no contest.

“Course owner” means a person or a combination of persons that own the proprietary rights to a course. A course owner may have developed the course or may have purchased the proprietary rights to the course.

“Department” has the meaning stated at A.R.S. § 6-101(5).

"Director" has the meaning stated at A.R.S. § 6-101(7).

“Disciplinary action” means any regulatory sanction imposed by the ~~Superintendent, Director, other~~ than remedial action imposed through a letter of remedial action, and may, including include corrective education, a civil money penalty, restriction on the nature and scope of the respondent’s practice, ~~consent agreement, monitoring~~, probation, mentorship, suspension, revocation, or an acceptance of surrender of a license or certificate- or a combination of the above.

“Distance education” means appraisal education delivered in a setting in which the learner and instructor are geographically separated.

“Federally Regulated Appraisal Management Company” has the meaning stated at A.R.S. § 32-3661(9).

“Investigation” means a fact-finding process and review that is initiated when the Department receives a complaint.

“Investigator” means an individual who is a Department employee or operates under a contract with the Department to carry out investigations of alleged violations.

“Jurisdictional criteria” means the statutory standards of A.R.S. §§ 6-123, 6-124, and A.R.S. Title 32, Chapter 36, used by the Department to determine whether a complaint falls within ~~the~~ Superintendent’s its jurisdiction.

“Letter of concern” means a non-disciplinary advisory letter to notify a respondent that the finding of the ~~Superintendent~~ Director does not warrant disciplinary action, but is nonetheless cause for concern ~~on the part of the Superintendent~~ and that its continuation may result in disciplinary action.

“Letter of remedial action” means a non-disciplinary letter that requires a respondent to take remedial action when any minor violation of A.R.S. Title 32, Chapter 36 or this Chapter is found.

“Mentor” means a certified appraiser authorized by the Department to supervise the work product of an appraiser who is subject to disciplinary action by the ~~Superintendent.~~ Director.

“Party” means each person or agency named or admitted as a party or properly seeking and entitled to participate in any proceeding.

“Person” means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.

“Probation” means a term of oversight by the Department, imposed upon a respondent as part of a disciplinary action, which may include submission of logs, working under the supervision of a mentor, or other conditions intended to protect the public and educate the respondent.

“Property Tax Agent” has the meaning stated at A.R.S. § 32-3651(3).

“Remedial action” means any corrective remedy that is designed to assist the respondent in improving the respondent’s professional practice.

“Respondent” means an appraiser, course owner, property tax agent, or appraisal management company against whom a complaint has been filed or any other party responding to an investigation,

an action, a motion or a proceeding before the ~~Superintendent~~ Director.

“Secondary provider” means a person that purchases or otherwise lawfully acquires the right to provide a course independently of the course owner that retains proprietary rights to the course.

~~“Superintendent” means the Superintendent of the Department of Financial Institutions.~~

“USPAP” means the Uniform Standards of Professional Appraisal Practice, issued and updated by The Appraisal Foundation and made state law under A.R.S. § 32-3610.

“Work file” means the documentation necessary to support the analysis, opinions, and conclusions of an appraisal assignment or tax appeal.

R4-46-102. Powers of ~~Superintendent~~ Director

- A.** The ~~Superintendent~~ Director may appoint advisory committees the ~~Superintendent~~ Director deems appropriate. The committees shall make advisory recommendations to the ~~Superintendent~~. ~~The Superintendent, in its discretion, may accept, reject, or modify the advisory recommendations. which may be accepted, rejected, or modified at the Director’s discretion.~~
- B.** Under the authority provided by A.R.S. § 32-3605(B), the ~~Superintendent~~ Director may designate, train, and supervise volunteer licensees to conduct compliance audits of approved courses under Section R4-46-508.

R4-46-106. Fees

- A.** Under the specific authority provided by A.R.S. §§ 32-3607, ~~3619, and 3667~~, 32-3619, and 32-3667, the ~~Superintendent~~ Director establishes and shall collect the following fees:
1. Application for original license or certificate: \$400_₹
 2. Application for registration as a trainee appraiser: \$300_₹
 3. Examination: The amount established by the AQB-approved examination provider.
 4. Biennial renewal of a license or certificate: \$425_₹
 5. Renewal of registration as a trainee appraiser: \$300_₹
 6. Delinquent renewal (in addition to the renewal fee): \$25_₹
 7. National Registry: The amount established by the Appraisal Subcommittee_₹
 8. Application for license or certificate by reciprocity: \$400_₹
 9. Application for non-resident temporary license or certificate: \$150_₹
 10. Course approval:
 - a. Core-curriculum qualifying education
 - i. Initial course approval: \$200_₹
 - ii. Renewal of course approval: \$200_₹
 - b. Continuing education
 - i. Initial course approval: \$200_₹
 - ii. Renewal of course approval: \$200_₹
 11. Application for initial registration as an appraisal management company: \$2,500_₹
 12. Biennial renewal of registration as an appraisal management company: \$2,500_₹

- B. The fees established in subsection (A) and those specified in A.R.S. § 32-3652 are not refundable unless the provisions of A.R.S. § 41-1077 apply.
- C. A person shall pay fees by cash or credit or debit card, or by certified or cashier's check, or money order payable to the ~~Department of Financial Institutions~~. Department of Insurance and Financial Institutions.

R4-46-107. Procedures for Processing Applications

- A. To comply with A.R.S. Title 41, Chapter 6, Article 7.1, ~~the Superintendent establishes~~ the following ~~timeframes~~ time-frames are established for processing applications for registration, licensure, certification, and designation, including renewal applications, and applications for course approval:
1. The Department shall notify the applicant within ~~45~~ 60 days after receipt of the application that it is either administratively complete or incomplete. If the application is incomplete, the Department shall specify in the notice what information is missing.
 2. ~~The Superintendent shall render a~~ A final decision shall be rendered not later than ~~45~~ 60 days after the applicant successfully completes all requirements in statute or this Chapter.
 3. The overall ~~timeframe~~ time-frame for action is ~~90~~ 120 days, ~~45~~ 60 days for administrative completeness review and ~~45~~ 60 days for substantive review.
- B. An applicant whose application is incomplete shall supply the missing information within ~~30~~ 60 days after the date of the notice unless the ~~time frame~~ time-frame is extended by mutual agreement. The administrative completeness review ~~time frame~~ time-frame stops running on the date of the Department's written notice of an incomplete application; and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department may reject the application and close the file. An applicant may reapply.
- C. If the ~~Superintendent~~ Director denies registration, licensure, certification, designation, or course approval to an applicant, the Department shall send the applicant written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a hearing to appeal the denial; and
 3. The time for appealing the denial.

ARTICLE 2. REGISTRATION, LICENSURE, AND CERTIFICATION AS AN APPRAISER

R4-46-201. Appraiser Qualification Criteria

- A. Classifications. As specified in A.R.S. § 32-3612, Arizona recognizes five classifications of appraisers. These classifications are:
1. Registered trainee appraiser,
 2. State licensed real estate appraiser,
 3. State certified residential real estate appraiser,
 4. State certified general real estate appraiser, and
 5. Designated supervisory appraiser.

- B.** Qualification criteria. Except as provided elsewhere in this ~~Chapter, Article~~, an applicant for an original or renewal of a registration, licensure, certification, or designation shall meet the classification-specific qualification criteria established and updated ~~May 1, 2018~~ January 1, 2022 by the AQB, which ~~the Superintendent incorporates~~ is incorporated by reference. A copy of the incorporated materials is on file with the Department and may be obtained from the Department or the Appraisal Foundation. This rule does not incorporate any later date or edition of this material.
- C.** Regardless of whether a transaction is federally related:
1. A state licensed residential appraiser is limited to the scope of practice in A.R.S. § ~~32-3612(A)(3)~~, 32-3612(3), and
 2. A state certified residential appraiser is limited to the scope of practice in A.R.S. § ~~32-3612(A)(2)~~, 32-3612(2).
- D.** ~~If the Superintendent determines that~~ an applicant for registration, licensure, or certification meets the qualification criteria prescribed in A.R.S. Title 32, Chapter 36 and this ~~Chapter, Article~~, including evidence that the applicant has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B); and has submitted the application and the biennial National Registry fees specified in Section R4-46-106, ~~the Superintendent shall issue a~~ registration, license, or certificate that entitles the applicant to practice within the appropriate scope specified in A.R.S. § 32-3612 for the term specified in A.R.S. § 32-3616: shall be issued.

R4-46-201.01. Application for Designation as a Supervisory Appraiser; Supervision of a Registered Trainee Appraiser

- A.** An individual who wishes to act as a supervisory appraiser for a registered trainee appraiser shall:
1. Apply for and obtain designation ~~from the Superintendent~~ as a supervisory appraiser before providing supervision to a registered trainee appraiser,
 2. Have been state certified for at least three years, and
 3. Apply for designation under A.R.S. § 32-3614.02.
- B.** To apply for designation as a supervisory appraiser, a certified appraiser shall submit to the ~~Superintendent:~~ Department:
1. An application for designation;
 2. A statement whether the applicant for designation has been disciplined in any jurisdiction in the last three years in a manner that affects the applicant's eligibility to engage in appraisal practice and if so, the name of the jurisdiction, date of the discipline, circumstances leading to the discipline, and date when the discipline was completed;
 3. Evidence that the applicant for designation completed a training course that complies with the course content established by the AQB and that is specifically oriented to the requirements and responsibilities of supervisory and trainee appraisers;
 4. A signed affirmation that the applicant for designation will comply with the USPAP Competency Rule for the property type and geographic location in which the supervision will be provided; and
 5. Any other information and documentation that is necessary to meet the qualification criteria established and updated by the AQB.
- C.** Supervision requirements:

1. A registered trainee appraiser may have more than one designated supervisory appraiser.
2. A designated supervisory appraiser shall not supervise more than three registered trainee appraisers at any one time.
3. A registered trainee appraiser shall maintain a separate appraisal log for each designated supervisory appraiser and, at a minimum, include the following in each log for each appraisal:
 - a. Type of property,
 - b. Date of report,
 - c. Address of appraised property,
 - d. Description of work performed by the registered trainee appraiser,
 - e. Scope of review and supervision provided by the designated supervisory appraiser,
 - f. Number of actual work hours worked by the registered trainee appraiser on the assignment, and
 - g. Signature and state certificate number of the designated supervisory appraiser.
4. A designated supervisory appraiser shall provide to the ~~Superintendent~~ Department in writing the name and address of each registered trainee appraiser within 10 days of engagement and notify the ~~Superintendent~~ Department in writing ~~immediately~~ within 10 days when the engagement ends.
5. If a registered trainee appraiser or designated supervisory appraiser fails to comply with the applicable requirements of this Section:
 - a. The registered trainee appraiser or the designated supervisory appraiser may be subject to disciplinary action under A.R.S. § 32-3631(A)(8), and
 - b. The registered trainee appraiser shall not receive experience credit for hours logged during the period that the registered trainee appraiser or designated supervisory appraiser failed to comply with the applicable requirements of this Section.

R4-46-202.01. Application for Licensure or Certification by Reciprocity

~~A. The Superintendent shall~~ To be eligible to obtain a license or certify an individual certificate by reciprocity in the same classification, as specified in Section R4-46-201(A), in which ~~the~~ an individual is currently licensed or certified, ~~if~~ the individual shall submit:

1. ~~Is~~ Evidence that the applicant is licensed or certified in a state that meets the standards established at A.R.S. § 32-3618;
2. ~~Submits a~~ A completed application form;
3. ~~Submits documentation of citizenship or alien status, specified under A.R.S. § 41-1080(A), indicating the individual's presence in the U.S. is authorized under federal law;~~ Disclosure of the state(s) in which the individual is currently licensed or certified; -
4. ~~Has the state in which the individual is currently licensed or certified send a verification of credential directly to the Superintendent that provides the following information:~~
 - a. ~~License or certification number;~~
 - b. ~~Classification, as specified in R4-46-201(A), in which the individual is currently licensed or certified;~~
 - c. ~~Statement of whether the license or certificate is in good standing; and~~
 - d. ~~Statement of whether disciplinary proceedings are pending against the individual;~~

Evidence that the individual has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B); and

5. ~~Submits evidence that the individual has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B); and~~ The application and biennial National Registry fees specified under Section R4-46-106.

~~6. Submits the application and biennial National Registry fees specified in R4-46-106.~~

B. The Department shall verify the following information:

1. License or certification number;

2. Classification, as specified in Section R4-46-201(A), in which the individual is currently licensed or certified; and

3. Whether the license or certificate is in good standing.

R4-46-203. Application for Non-resident Temporary Licensure or Certification

A. To be eligible to obtain a non-resident temporary license or certificate, an individual shall:

1. Be licensed or certified as an appraiser in a state other than Arizona;

2. Not be licensed or certified as an appraiser in Arizona; and

3. Have a dated and signed letter from a client that names the individual and indicates the client has engaged the individual to conduct an appraisal in Arizona, identifies the property or properties to be appraised, and specifies a date certain for completion of the assignment that is no more than one year from the date on which the ~~Superintendent~~ Director issues a non-resident temporary license or certificate.

B. To apply for a non-resident temporary license or certificate, an individual who meets the pre-requisites in subsection (A) shall submit:

1. A completed application form;

2. An irrevocable consent to service of process;

3. ~~Documentation of citizenship or alien status, specified under A.R.S. § 41-1080(A), indicating the applicant's presence in the U.S. is authorized under federal law;~~ Evidence that the applicant has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B); and

4. ~~Evidence that the applicant has applied for a valid fingerprint clearance card pursuant to A.R.S. § 32-3620(B); and~~ The application fee specified under Section R4-46-106.

~~5. The fee required under R4-46-106.~~

C. The ~~Superintendent~~ Director shall grant an extension of no more than 120 days to an individual to whom a non-resident temporary license or certificate has been issued if the individual provides written notice ~~to the Superintendent~~ before the date specified in subsection (A)(3) that more time is needed to complete the assignment described in subsection (A)(3).

D. An appraiser to whom ~~the Superintendent has previously issued~~ a non-resident temporary license or certificate has previously been issued may, if qualified under subsection (A), apply for another non-resident temporary license or certificate by complying with subsection (B), except ~~the Superintendent shall not require~~ the applicant is not required to comply again with subsection ~~(B)(4)~~. (B)(3) unless the card has expired, or is suspended or cancelled.

E. The ~~Superintendent~~ Director shall issue no more than 10 non-resident temporary licenses or certificates to an individual in any 12-month period.

R4-46-204. Licensure and Certification Examinations

~~A.~~ An applicant for licensure or certification may schedule an examination after the Department provides written notice to the applicant, to the extent written notice is required by the AQB. In such case, an applicant shall have ~~30~~ 90 days from the written notice to successfully complete the AQB-approved examination for the classification for which application is made unless the ~~time frame~~ time-frame is extended by mutual agreement.

~~B.~~ An applicant for licensure or certification who fails to pass the required examination or fails to appear for a scheduled examination may schedule another examination by providing written notice to the Superintendent and paying the examination fee specified in R4-46-106. The applicant remains subject to the specified time limit in subsection (A) or in R4-46-107, as applicable.

R4-46-209. Registration, License, or Certificate; Name Change; Conviction and Judgment Disclosure

A. If the name of an appraiser is legally changed, the appraiser shall submit written notice of the change to the Department and provide documentation showing the circumstances under which the name change occurred. ~~The Superintendent shall issue the appraiser a~~ A new registration, license, or certificate with the correct name: shall be issued.

B. Within 30 days after the filing date of a criminal conviction in any jurisdiction, an appraiser or property tax agent who has been convicted shall report the conviction to the Department. The report shall include a copy of the initial indictment, information or complaint filed, the final judgment entered by the court, and all other relevant legal documents.

C. Within 30 days after the final disposition of a matter, an appraiser or property tax agent shall report to the Department any civil judgment based on fraud, misrepresentation, or deceit in the making of any appraisal entered against the appraiser or property tax agent.

ARTICLE 3. COMPLAINT INVESTIGATIONS

R4-46-301. Complaints and Investigations; Complaint Resolution

A. Complaints and Investigations

1. The Department shall investigate a complaint, if the complaint meets the minimum jurisdictional criteria.
2. The Department may notify the respondent of a complaint.
3. The Department may require that the respondent file a written response to the complaint and provide any one or more of the following:
 - a. Appraisal report,
 - b. Appraisal review,

- c. Consulting assignment,
 - d. Property tax appeal at issue,
 - e. Work file, and
 - f. Any other relevant records.
4. The Department may assign or contract with an investigator.
 5. Under A.R.S. §§ 6-123(3), 6-124, ~~and 12-2212,~~ and 32-3631(C), the ~~Superintendent~~ Director may compel testimony or document production, regardless of whether an investigation is in process.

B. Complaint Resolution

1. Without limiting any other remedy allowed by statute, if the ~~Superintendent~~ Director finds a violation of A.R.S. Title 32, Chapter 36, or this Chapter, the ~~Superintendent~~ Director may:
 - a. Dismiss the matter based upon mitigating factors;
 - b. Issue a letter of concern;
 - c. Issue an order, which may include disciplinary action and/or remedial action; or
 - d. Resolve the matter by settlement.
2. Any time after a complaint has been filed against a respondent, the matter may be resolved by a settlement in which the respondent agrees to accept disciplinary action and/or remedial action by consent. If the ~~Superintendent~~ Director determines that the proposed settlement will adequately protect the public, the ~~Department~~ Director may ~~enter into a consent agreement or issue a~~ letter of remedial action, or enter into another form of stipulation, agreed settlement, or consent with the respondent. The ~~Superintendent~~ Director may also allow for a conditional dismissal.

ARTICLE 3.1. RULES OF PRACTICE AND PROCEDURE BEFORE THE ~~SUPERINTENDENT~~ DIRECTOR

R4-46-301.01. Scope of Article

This Article governs procedures in all contested cases and appealable agency actions, including administrative appeals, filed with the Department. The Department shall use the authority of A.R.S. §§ 41-1092 through 41-1092.12, and the Office of Administrative Hearings' procedural rules to govern the initiation and conduct of proceedings. In a case or action, special procedural requirements in state statute or another Section in this Chapter shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. §§ 41-1092 through 41-1092.12 or the Office of Administrative Hearings' rules. This Article does not apply to rulemaking or to investigative proceedings before the ~~Superintendent~~ Director.

R4-46-302.01. Commencement of Proceedings; Notice of Hearing

A person may obtain a hearing under A.R.S. § 41-1092.03 (B) on any appealable agency action or contested case, including the following, unless otherwise provided by law:

1. A letter or order granting or denying a license;
2. A cease and desist order;
3. An order to remedy unsafe or unsound conditions;
4. An order assessing a fine;

5. Any other order or matter ~~reviewable~~ reviewable in a hearing either under the authority of these rules, a statute, or an administrative rule enforced by the ~~Superintendent~~, Director, or by the order's express terms.

R4-46-303.01. Answer to Notice of Hearing

- A.** The ~~Superintendent~~ Director may, in a notice of hearing, direct one or more parties to file an answer to the assertions in the notice of hearing. Any party to the proceeding may file an answer without being directed to do so.
- B.** A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The ~~Superintendent~~ Director may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.
- C.** An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions in the notice of hearing. An answering party that does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny an assertion shall state that inability in its answer. That statement shall have the effect of a denial. A party admits each assertion that it does not deny. An answering party that intends to deny only a part or a qualification of an assertion, or to qualify an assertion, shall expressly admit as much of that assertion as is true and shall deny the remainder.
- D.** A party that fails to file an answer required by this Section within the time allowed is in default. The ~~Superintendent~~ Director may resolve the proceeding against a defaulting party. In doing so, the ~~Superintendent~~ Director may regard any assertions in the notice of hearing as admitted by the defaulting party.
- E.** An answering party waives all defenses not raised in its answer.

R4-46-304.01. Filing; Service

- A.** A person shall either personally deliver all papers permitted or required to be filed with the ~~Superintendent~~ Director or shall mail them by first class, certified, or express mail, or send them electronically to the Department, or shall serve them by any method permitted under R2-19-108. The Department considers papers filed when actually received at the ~~Superintendent's~~ Director's address stated in this subsection.
- B.** A party in a contested case or appeal from an agency action shall make any required or permitted service in the manner permitted under R2-19-108. A party shall make service upon each represented party's attorney unless the administrative law judge orders separate service on the actual party. A party shall make service upon each unrepresented party by service on the actual party.

R4-46-305.01. Stays

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the ~~Superintendent~~ Director stay an action or any part of an order that will become effective before the Department can hold a hearing. The ~~Superintendent~~ Director

may, in the ~~Superintendent's~~ Director's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:

1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the ~~Superintendent~~ Director grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

R4-46-306.01. Rehearing

- A.** Except as provided in subsection (H), any party in a contested case who is aggrieved by a decision rendered in that case may file with the ~~Superintendent,~~ Director, within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for rehearing.
- B.** A party requesting rehearing under this Section may amend a motion for rehearing at any time before the ~~Superintendent~~ Director rules on the motion. Any other party, or the Attorney General, may file a response to the motion for rehearing within 15 days after service of the motion for rehearing, or the amended motion for rehearing. The ~~Superintendent~~ Director may require a written brief of the issues raised in the motion and may allow oral argument.
- C.** The ~~Superintendent~~ Director may grant a motion for rehearing for any of the following causes:
1. Irregularity in the proceedings before the ~~Superintendent,~~ Director, in any order, or any abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Department, the administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary care;
 4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing;
 7. The decision is not justified by the evidence or is contrary to law.
- D.** The ~~Superintendent~~ Director may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (C). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.
- E.** The ~~Superintendent,~~ Director, within the time for filing a motion for rehearing, may without a motion order a rehearing or review of a decision for any reason that would allow the granting of a motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.
- F.** After giving the parties notice and an opportunity to be heard on the matter, the ~~Superintendent~~ Director may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.
- G.** When a motion for rehearing is based on an affidavit, the moving party shall serve the affidavit with the motion. An opposing party or the Attorney General may serve opposing affidavits within 10 days after service of the motion for rehearing.

H. The ~~Superintendent~~ Director may issue a final decision, subject only to judicial review and without an opportunity for rehearing or administrative review, if the ~~Superintendent~~ Director includes in the decision:

1. An express finding that the decision needs to be made immediately effective to preserve the public peace, health, and safety; and
2. An express finding that a rehearing or review is:
 - a. Impossible,
 - b. Unnecessary, or
 - c. Contrary to the public interest.

R4-46-307.01. Settlement

- A. The Department will enter into a settlement, either in litigation or in an administrative proceeding, only if the defendant or respondent admits to the allegations in the complaint, notice, or order relating to the jurisdiction of the ~~Superintendent~~ Director or the jurisdiction of the tribunal that will enter the judgment or order.
- B. The ~~Superintendent~~ Director has sole discretion to decide whether to resolve a matter by settlement. Nothing in Article 3 or Article 3.1 gives the ~~Superintendent~~ Director a duty to approve a settlement in any matter.

ARTICLE 4. APPRAISAL MANAGEMENT COMPANIES

R4-46-401. Application for Initial Registration

- A. Unless exempt under A.R.S. § 32-3663; or 12 USC § 3353(c), a person shall not engage in business as an AMC and shall not provide any appraisal management services unless registered with the Department.
- B. To register under subsection (A), a person shall submit:
1. A registration application ~~form~~, which is available from the Department and on its website, and provide the information and certifications required under A.R.S. § 32-3662(B);
 2. The name and contact information of the controlling person who will be the main contact for all communication between the Department and the AMC;
 3. For the controlling person, each officer, and each individual who owns ~~10 percent~~ 10% or more of the AMC:
 - a. A copy of a fingerprint clearance card application under A.R.S. § 41-1758.03~~;~~, and
 - b. The certification required under A.R.S. §§ 32-3668(B)(3) or 32-3669(B)(1), as applicable;
 4. Proof of the surety bond required under A.R.S. § 32-3667 and Section R4-46-402; and
 5. The application fee ~~required~~ specified under Section R4-46-106.
- C. If an AMC operates in Arizona under more than one name, other than a DBA, the controlling person of the AMC shall ensure that a complete application, as described in subsection (B), is submitted in each name under which the AMC will operate. However, if an individual previously submitted a copy of a valid fingerprint clearance card application under subsection (B), the individual is not required to

~~submit a copy of the~~ resubmit the fingerprint clearance card ~~again.~~ unless the card has expired, or is suspended, or cancelled.

R4-46-402. Bond Required

- A.** The surety bond required under A.R.S. § 32-3667 shall be in the amount of \$20,000 and shall be issued by a surety company authorized to do business in Arizona.
- B.** The controlling person of a registered AMC shall ensure that the surety bond required under A.R.S. § 32-3667 requires the issuing surety company to provide written notice to the Department by registered or certified mail at least 30 days before the surety company cancels the bond and within 30 days after the surety company pays a loss under the bond.
- C.** The surety bond required under A.R.S. § 32-3667 is to be used exclusively to ensure that a registered AMC pays:
1. All amounts owed to persons that perform real estate appraisal services for the AMC, and
 2. All amounts adjudged against the AMC as a result of either negligent or improper real property appraisal services or appraisal management services or of a breach of contract in performing real property appraisal services or appraisal management services.
- D.** The controlling person of a registered AMC shall ensure that the required surety bond is:
1. Maintained in the amount of \$20,000;
 2. Funded to \$20,000 within seven days after being drawn down; and
 3. Maintained for at least one year after the AMC's registration expires, is revoked or surrendered, or otherwise ends.
- E.** If the Department receives notice from the surety company of intent to cancel the required bond, the Department shall notify the controlling person of the AMC and require that the controlling person submit proof of a replacement bond before the existing bond is cancelled. Under A.R.S. § 32-3678, failure to maintain the required bond is grounds for disciplinary action.
- F.** If a registered AMC operates in Arizona under more than one name, other than a DBA, the controlling person shall ensure that a separate surety bond in the amount of \$20,000 is maintained in each name.
- G.** If the name of a registered AMC is changed, the controlling person of the registered AMC shall ensure that a surety bond in the amount of \$20,000 is:
1. Maintained in the former name for one year after the name is changed, and
 2. Obtained in the registered AMC's new name.
- H.** A person damaged by a registered AMC's failure to pay an obligation listed in subsection (C) has a right of action against the surety bond. The damaged person shall begin the action in a court of competent jurisdiction within one year after the AMC failed to pay the amount owed or the amount adjudged against the AMC.
- I.** If the surety bond required under A.R.S. § 32-3667 is cancelled, liability of the issuing surety company is not limited or cancelled regarding any claim against the surety bond ~~started before cancellation of the bond.~~ for actions by the AMC while the surety bond was in force.

R4-46-403. Change in Controlling Person or Agent for Service of Process; Notice of Adverse Action

- A. If any of the information submitted under Section R4-46-401(B)(2) changes, the controlling person of the registered AMC shall provide to the Department written notice of the change within 10 business days.
- B. If an individual becomes the controlling person of a registered AMC and the information required under Section R4-46-401(B)(3) was not previously submitted for the individual, the new controlling person shall ensure that the required information is submitted to the Department within 10 business days after the change in controlling person.
- C. If a registered AMC is required under A.R.S. § 32-3662(B)(4) to provide the name and contact information for an agent for service of process in this state, the controlling person of the AMC shall provide the Department written notice of any change in the information within 10 business days.
- D. If the regulated entity, the responsible person, any controlling person, or any person who owns 10% or more of the firm has ever been, or is currently, the subject of any complaint, investigation, or disciplinary action against a license, certificate, registration, or membership by any state regulatory agency, or any professional or occupational credentialing authority that resulted in an adverse judgment against them, including any denial, or voluntary surrender, withdrawal, or resignation of a credential in lieu of disciplinary action, the controlling person of the AMC shall provide the Department with written notice of such action within 10 business days after such action has been finalized.

R4-46-404. Application for Renewal Registration

- A. Under A.R.S. § 32-3665, an initial registration for an AMC expires one year after the date of issuance. A renewal registration for an AMC expires two years after the date of issuance.
- B. To renew registration for an AMC, the controlling person of the registered AMC shall, at least within 60 days before expiration, submit:
 - 1. A renewal registration application, ~~form, which is available from the Department and on its website;~~
 - 2. The certifications required under A.R.S. § 32-3662(B);
 - 3. Proof of the surety bond required under A.R.S. § 32-3667 and Section R4-46-402; ~~and~~
 - 4. The renewal fee ~~specified in~~ under Section R4-46-106;
 - 5. Evidence that each person who has at least a 10% ownership interest in the AMC and the controlling person have applied for a valid fingerprint clearance card unless a valid fingerprint clearance card is currently on file with the Department, and
 - 6. Disclose any changes to the percentage of ownership.
- C. If the controlling person of a registered AMC fails to comply with subsection (B) and the registration expires, the controlling person shall ensure that the AMC immediately ceases providing all appraisal management services. The Department may accept a renewal application after the expiration date if within 90 days of the date of expiration but shall assess a delinquent renewal fee in addition to the renewal fee.

R4-46-405. Certifications; National Registry Reporting

- A. Under A.R.S. § 32-3672, the controlling person of a registered AMC is required to make certain certifications to the ~~Superintendent~~ Department at the time the AMC's registration is renewed.
- B. To make the certifications required under A.R.S. § 32-3672, the controlling person of a registered AMC shall use a form that is available from the Department and on its website.
- C. The controlling person of a registered AMC shall make available to the Department, upon request, evidence that the certifications are true and that the systems, processes, and records certified are effective in protecting the public.
- D. ~~Under A.R.S. § 32-3678, failure to comply with this Section is grounds for disciplinary action.~~ In accordance with the provisions contained in 12 U.S.C. § 3338, each authorized representative or controlling person of an AMC that is either registered with the state or federally regulated and operating in Arizona shall annually submit an AMC National Registry Report to the Department at least 15 days prior to March 1st of each year for the period from January 1 to December 31 of the previous year. The AMC National Registry Report shall include:
1. Identifying information for the AMC;
 2. The number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction in the state during the previous year, or from the commencement of business for AMCs not in existence for the entire previous year; and
 3. A signed affirmation by written declaration.
- E. The AMC shall pay, at the time it submits the National Registry Report to the Department, the fee required under 12 U.S.C. § 3338(a)(4).
- F. A registered AMC or federally regulated AMC operating in Arizona who fails to timely submit a National Registry Report to the Department and to remit the AMC National Registry fee shall not appear on the AMC National Registry.
- G. Under A.R.S. § 32-3678, failure to comply with this Section is grounds for disciplinary action.

R4-46-406. Appeal for Waiver

- A. Under A.R.S. §§ 32-3668 and 32-3669, an AMC for which registration is sought under Section R4-46-401 may not have an owner, controlling person, officer, or other individual with a ~~40 percent~~ 10% or greater financial interest in the AMC who has ever had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered in any state.
- B. The requirement in subsection (A) may be waived, at the discretion of the ~~Superintendent~~, Director, when an appeal is made by the individual who has had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered.
- C. To make an appeal for waiver under subsection (B), the individual who has had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered shall submit ~~to the Superintendent~~ an appeal for waiver form, which is available from the Department and on its website.

- D.** In deciding whether to waive the requirement under subsection (A), the ~~Superintendent~~ Director shall consider the following factors:
1. Whether the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate was based on a finding of fraud, dishonesty, misrepresentation, or deceit on the part of the appellant;
 2. The amount of time that has elapsed since the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate;
 3. Whether the act leading to the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate was an isolated occurrence or part of a pattern of conduct;
 4. Whether the act leading to the refusal, denial, cancellation, revocation, or voluntary surrender of a license or certificate appears to have been done for a self-serving purpose;
 5. The harm caused to victims, if any;
 6. Efforts at rehabilitation, if any, undertaken by the appellant and evidence regarding whether the rehabilitation efforts were successful;
 7. Restitution made by the appellant to victims, if any; and
 8. Other factors in mitigation or aggravation that the ~~Superintendent~~ Director determines are relevant.

R4-46-408. Voluntarily Relinquishing Registration

- A.** The controlling person of a registered AMC may voluntarily relinquish the AMC's registration if:
1. No complaint is currently pending against the AMC,
 2. All amounts owed under subsection R4-46-402(C) have been paid, and
 3. The AMC is in good standing with the Department.
- B.** To voluntarily relinquish an AMC's registration, the controlling person of the AMC shall enter into an agreement with the ~~Superintendent~~ Director that provides the AMC shall:
1. Cease engaging in business as an AMC and cease providing appraisal management services immediately, and
 2. Maintain the surety bond required under A.R.S. § 32-3667 for one year after the agreement is entered.

ARTICLE 5. COURSE APPROVAL

R4-46-501. Course Approval Required; Definitions

- A.** Under A.R.S. §§ 32-3601(10) and 32-3625, a course must be approved by the ~~Superintendent,~~ Director, including a course presented by distance education, before the course is offered in Arizona. ~~The Superintendent shall approve a~~ A course shall be approved as either qualifying or continuing education.
- B.** Prior to the approval of a course as either qualifying or continuing education, the Department shall determine whether the course satisfies the qualification criteria ~~in~~ under subsection R4-46-201(B).
- C.** A course owner shall ensure that the course is not offered as either qualifying or continuing education until the course owner receives notice that the course has been approved ~~by the Superintendent~~ unless

the course owner includes notice in the offering materials that course approval ~~by the Superintendent~~ is pending and no credit may be claimed for participating in the course until approval is received.

- D.** The Department shall include in the notice of course approval referenced in subsection (C):
1. An index number for the approved course,
 2. The maximum number of hours of instruction (including examination time if applicable) that may be claimed for participating in the approved course, and
 3. Whether the course is approved as qualifying or continuing education.
- E.** A course owner shall ensure that the course is not advertised or represented as ~~Superintendent-approved~~ approved until after receipt of the notice referenced in subsection (D). After receiving notice of course approval, the course owner may represent in any materials that the course is ~~Superintendent-approved~~ approved.

F. As used in this Article:

“Continuing education” means the basic education requirement for renewal of a license or certification within the meaning of A.R.S. § 32-3625.

“Qualifying education” means the basic education requirement to apply as a state-licensed appraiser under A.R.S. § 32-3613(B) or state-certified real estate appraiser under A.R.S. § 32-3614(C).

R4-46-502. Approval of Distance-education Delivery Mechanism

If a course is to be delivered by distance education, the course owner shall obtain approval of the course-delivery mechanism from one of the following sources: if required:

1. ~~An AQB-approved organization~~ An organization approved by the AQB that provides approval of course design and delivery;
2. An accredited institution of higher education that approves the content of the course and offers and awards academic credit for the distance-education course; or
3. An accredited institution of higher education that approves the content of the course and a distance-education approval organization that approves the course design and delivery, which includes interactivity.

R4-46-503. Course Owners

- A.** ~~Superintendent approval~~ Approval of a course granted to the course owner extends to a secondary provider. However, for a course delivered by distance education:
1. A course owner’s approval of the course-delivery mechanism, as required under Section R4-46-502, does not extend to a secondary provider; and
 2. Both the course owner and secondary provider shall apply for and obtain approval of the course-delivery mechanism from a source listed in Section R4-46-502.
- B.** If a course owner allows a ~~Superintendent-approved~~ an approved course to be offered by a secondary provider, the course owner shall ensure that the secondary provider:
1. Uses the course owner’s materials, including the same textbook and examination, if any;

2. Allows only the number of hours specified by the Department under subsection R4-46-501(D);
 3. Uses an instructor who is qualified under the standards specified in subsection R4-46-506(7); and
 4. Adheres to the course owner's policies regarding student attendance, course scheduling, and prerequisites, if any.
- C. Before allowing a ~~Superintendent-approved~~ approved course to be offered by a secondary provider using distance education, the course owner shall comply with subsection (B) and:
1. Ensure that the secondary provider has obtained approval of the course-delivery mechanism from a source listed in Section R4-46-502, and
 2. Provide to the ~~Superintendent~~ evidence that the secondary provider has obtained approval of the course-delivery mechanism for the ~~Superintendent-approved~~ approved course.
- D. ~~The Superintendent shall hold a~~ A course owner shall be held responsible if a secondary provider, authorized by the course owner under subsection (B) or (C), violates any provision of this ~~Chapter~~ Article.

R4-46-504. Application for Course Approval

Only a course owner may apply for course approval. To apply for course approval, a course owner shall submit to the Department:

1. An application for course approval, which is available from the Department and on its website;
2. Materials and other documents that demonstrate the course meets the minimum standards specified in Section R4-46-506;
3. If the course will be offered using distance education, evidence of approval of the course-delivery mechanism from a source listed in Section R4-46-502; and
4. The application fee specified under Section R4-46-106.

R4-46-505. Course Approval without Application

The ~~Superintendent~~ Director approves without application the following:

1. A course approved through the AQB's voluntary Course Approval Program;
2. The 15-Hour National USPAP Course or its ~~AQB-approved~~ equivalent, approved by the AQB, if the course is taught by at least one ~~AQB-certified USPAP~~ instructor who is also a state certified appraiser in good standing who is certified by the AQB as an USPAP instructor; and
3. The 7-Hour National USPAP Update Course or its ~~AQB-approved~~ equivalent, approved by the AQB, if the course is taught by at least one ~~AQB-certified USPAP~~ instructor who is also a state certified appraiser in good standing certified by the AQB as an USPAP instructor.

R4-46-506. Minimum Standards for Course Approval

The ~~Superintendent~~ Director shall approve a course only if the course owner submits the following materials and documents with the application for approval required under Section R4-46-504 and

demonstrates the course, including a course presented by distance education, meets the following minimum standards:

1. Course description. Clearly describe the subject matter content of the course.
2. Summary outline. Identify major topics and the number of classroom hours devoted to each.
3. Prerequisites. Specify necessary prerequisites for any course other than a course on:
 - a. Introductory real estate appraisal principles and practices, and
 - b. Appraisal standards and ethics.
4. Learning objectives. Specific learning objectives shall:
 - a. State clearly the specific knowledge and skills students are expected to acquire by completing the course;
 - b. Be consistent with the course description required under subsection (1);
 - c. Be consistent with the instructional materials described in subsection (5);
 - d. Be achievable in the number of hours allotted for the course;
 - e. If for qualifying education, specify the required core curriculum, module subtopic, and number of course hours; and
 - f. If for continuing education, specify the appraisal topic and number of course hours.
5. Instructional materials. Instructional materials used by students shall:
 - a. Cover the subject matter in sufficient depth to achieve the learning objectives specified in subsection (4);
 - b. Reflect current knowledge and practice in the field of appraisal;
 - c. Contain no significant errors;
 - d. Use correct grammar and spelling;
 - e. Be written in a clear, concise, and understandable manner;
 - f. Be in a format that facilitates learning; and
 - g. Be bound or packaged and produced in a quality manner.
6. Examinations for qualifying education courses. Qualifying education courses shall include a series of examinations; or a comprehensive final examination, or both. A course examination shall:
 - a. Contain enough questions to assess adequately whether a student acquired knowledge of the subject matter covered by the course;
 - b. Contain questions directed towards assessing whether students achieved the learning objectives specified in subsection (4);
 - c. Be allotted sufficient time for students to complete;
 - d. Contain questions on information adequately addressed in the instructional material required under subsection (5);
 - e. Contain questions that are written in a clear, accurate, and unambiguous manner;
 - f. Contain questions for which the intended answer is clearly the best answer choice;
 - g. Be proctored and closed-book; and
 - h. Have a criterion for passing that is announced before the examination is given.
7. Instructor qualifications policy. The course owner has a written policy that requires use of instructors who meet at least one of the following:
 - a. Has a baccalaureate degree in any field and at least three years of experience directly related to the subject matter to be taught,

- b. Has a master's degree in any field and one year of experience directly related to the subject matter to be taught,
 - c. Has a master's or higher degree in a field directly related to the subject matter to be taught,
 - d. Has at least five years of real estate appraisal teaching experience directly related to the subject matter to be taught, or
 - e. Has at least seven years of real estate appraisal experience directly related to the subject matter to be taught.
8. Required policies. The course owner shall have the following written policies:
- a. Attendance policy that ensures student attendance is verified.
 - i. Stipulate that to receive credit, a student must be present for the entire course;
 - ii. Include the instructor's name on the attendance record; and
 - iii. Maintain attendance records for five years;
 - b. Scheduling policy.
 - i. Provide that a student may participate in a maximum of eight hours of instruction in a day, and
 - ii. Provide that appropriate breaks are included during each class session, and
 - c. Completion certificate policy.
 - i. Require that a signed and dated completion certificate be issued promptly to all students who complete a course, and
 - ii. Require that a completion certificate contain all information required on the form of certification provided by the Department.

R4-46-507. Secondary Providers

The ~~Superintendent~~ Director shall hold a course owner responsible for the activities of a secondary provider who conducts the course owner's ~~Superintendent-approved~~ approved course in Arizona. To protect the integrity of the ~~Superintendent's~~ approval, a course owner shall have a written agreement with a secondary provider that requires the secondary provider to:

1. Use the materials required under subsection R4-46-506(5) and the examination required under subsection R4-46-506(6) without change;
2. Conduct the course in accordance with the policies required under subsections R4-46-506(7) and (8);
3. Clearly state in advertising materials that the course has been lawfully acquired from the course owner and that ~~Superintendent~~ approval was provided to the course owner and not to the secondary provider;
4. Cease using the materials and examination when the course approval expires under Section R4-46-510; and
5. If the course is to be delivered by distance learning, obtain approval of the course-delivery mechanism from a source listed in Section R4-46-502.

R4-46-508. Compliance Audit of Approved Courses

- A. To improve the quality of education available to appraisers in this state, the Department may regularly audit approved courses for compliance with this Chapter.
- B. The ~~Superintendent~~ Director shall identify approved courses for audit using the following to establish the priority of audits:
 - 1. Approved courses about which a complaint has been received,
 - 2. Approved courses of a course owner that is new to this state, and
 - 3. Approved courses that have not been audited in the last five years.
- C. On request from the ~~Superintendent~~, Director, the course owner of an approved course shall provide the dates, times, and locations at which the approved course will be taught and the name of the instructor who will teach each presentation of the approved course.
- D. The audit of an approved course may be conducted by a volunteer auditor trained by the Department.
- E. The course owner of an approved course shall allow an auditor described under subsection (D) to attend the approved course at no charge.
- F. The auditor shall be identified to the instructor before the approved course starts.
- G. On request from the auditor, the course owner shall allow the auditor to examine records, materials, and other documents relevant to the approved course audited.
- H. After review by the ~~Superintendent~~, Director, the Department shall provide a copy of the audit report to the course owner. If the audit identifies ways in which the approved course fails to comply with this ~~Chapter~~, Article, the Department shall:
 - 1. Work with the course owner to establish a correction plan to bring the course into compliance,
 - 2. Establish a time within which the course owner is required to complete the correction plan and bring the course into compliance, and
 - 3. Inform the course owner of the manner in which to report the approved course is in compliance with this ~~Chapter~~. Article.
- I. Failure of a course owner to comply with this ~~Chapter~~ Article may lead to revocation of course approval.

R4-46-509. Changes to an Approved Course

The ~~Superintendent~~ Director encourages revisions and updates that improve and keep an approved course current. However, if any of the information provided under subsections R4-46-506(1), (2), (4), or (5) changes so substantially as to alter the scope of the approved course as determined at the sole discretion of the ~~Superintendent~~, Director, the course owner of the approved course shall submit a new application for approval under Section R4-46-504.

R4-46-510. Renewal of Course Approval

- A. Course approval expires a maximum of two years after approval is granted. Approval of a distance education course expires in two years or, if applicable, when the distance education delivery-mechanism approval required under Section R4-46-502 or approval under Section R4-46-505 expires, whichever is less.

- B. The ~~Superintendent~~ Director may renew the approval of a course only if the information provided under subsections R4-46-506(1), (2), (4), and (5) has not changed substantially.
- C. If an approved course meets the standard in subsection (B), the course owner may apply for renewal of course approval ~~no later than 30~~ within 90 days before the course approval expires.
- D. To apply for renewal of course approval, a course owner shall submit a renewal application, which is available from the Department and on its website, and pay the renewal fee specified in subsection R4-46-106(A)(10).

R4-46-511. Transfer of an Approved Course

- A. A course owner that transfers the proprietary rights to a ~~Superintendent-approved~~ an approved course shall provide written notice of the transfer to the Department. The course owner shall include in the notice the name of and contact information for the new course owner and the date of the transfer.
- B. The new course owner to which the proprietary rights to a ~~Superintendent-approved~~ an approved course are transferred shall attach to the notice required under subsection (A) a certification, ~~using a form~~ available from the Department and on its website, that the new course owner:
 - 1. Will adhere to the requirements in this Article, and
 - 2. Will be responsible for the actions of all secondary providers who have an agreement under Section R4-46-507.
- C. If proprietary rights to a ~~Superintendent-approved~~ an approved course are transferred under this Section, the expiration date of the course approval does not change.

ARTICLE 6. PROPERTY TAX AGENTS

R4-46-601. Standards of Practice

The ~~Superintendent~~ Director may revoke or suspend a property tax agent's registration or otherwise discipline a property tax agent to the extent permitted by A.R.S. § 32-3654 for any of the following acts or omissions:

- 1. Engaging in an activity that leads to a conviction for a crime involving the tax profession;
- 2. Operating beyond the boundaries of an agreed relationship with an employer or a client;
- 3. Inferring or implying representation of a person or firm that the agent does not represent, or filing a document on behalf of a taxpayer without specific authorization of the taxpayer;
- 4. Violating the confidential nature of the property tax agent-client relationship, except as required by law;
- 5. Inappropriately offering or accepting anything of value with the intent of inducing or in return for a specific action;
- 6. Assigning, accepting, or performing a tax assignment that is contingent upon producing a predetermined analysis or conclusion;
- 7. Issuing an appraisal analysis or opinion, in the performance of a tax assignment, that fails to disclose bias or the accommodation of a personal interest;

8. Willfully furnishing inaccurate, deceitful, or misleading information, or willfully concealing material information in the performance of a tax assignment;
9. Preparing or using, in any manner, a resume or statement of professional qualifications that is misleading or false;
10. Promoting a tax agent practice or soliciting assignments by using misleading or false advertising;
11. Soliciting a tax assignment by assuring a specific result or by stating a conclusion regarding that assignment without analysis of the facts; or
12. Performing an appraisal, as defined by A.R.S. § 32-3601, unless licensed or certified by the ~~Superintendent~~ Director as an appraiser.

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement

Title 4. Professions and Occupations

Chapter 46. Department of Financial Institutions – Real Estate Appraisal

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The Arizona Department of Insurance and Financial Institutions, Division of Financial Institutions (“Department”) seeks to update the rules in Title 4, Chapter 46, A.A.C. R4-46-101 through and R4-46-601. Laws 2017, Chap. 334 (SB 1197) consolidated the former Board of Appraisal into the Arizona Department of Financial Institutions (“DFI”). In 2018 and 2019, the Department engaged in rulemaking that attempted to address changes in SB 1197. The rulemaking removed many redundant and inapplicable rules from Title 4, Chapter 46 (25 A.A.R. 1139, May 3, 2019); however, the changes created unanticipated regulatory issues for the DFI’s enforcement of laws that apply to appraisers, appraisal management companies, education course providers, and property tax agents. In July 2020, the DFI merged with the Arizona Department of Insurance. As a result, the former agencies became divisions of the Department.

In 2021, the Department ran legislation to bring the statutory sections governing real estate appraisal in line with the Department’s new structure which eliminated the position of Superintendent. (Laws 2021, Chap. 356 (SB 1463)). This rulemaking attempts to synchronize the rules with the governing statutes and the Department’s regulatory functions with regard to appraisers, appraisal management companies, education course providers and property tax agents. No changes are proposed for Section R4-46-407.

Questions about this Economic Impact Statement may be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

This regulation applies to Appraisers, Appraisal Management Companies, Course Owners, and Property Tax agents subject to Title 32, Chapter 36 (A.R.S. §§ 32-3601 through 32-3680) and A.A.C. R4-46-101 through R4-46-601.

A.R.S. § 41-1055(B)(3): 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 proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule changes.

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

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

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

No additional costs are anticipated to be imposed on appraisers or appraisal management companies in association with the National Registry reporting and fees because those requirements are already in statute.

The costs incurred by the additional reporting requirements for appraisers, appraisal management companies, and property tax agents are unknown at this time.

Licenseses were encouraged to submit this information to the Department during the public comment period but no one submitted this information. The Department believes these costs will be minimal because the reporting requirement is only triggered by the occurrence of specific, rare events.

In the case of appraisers and property tax agents, reporting is triggered when an appraiser or property tax agent is criminally convicted or when a civil judgment based on fraud, misrepresentation, or deceit in the making of any appraisal is entered against the appraiser or property tax agent (Section R4-46-209).

In the case of appraisal management companies, reporting is triggered when the responsible person, any controlling person, or any person who owns 10% or more of the firm is the subject of any complaint, investigation, or disciplinary action against a license, certificate, registration, or membership by any state regulatory agency, or any professional or occupational credentialing authority that resulted in an adverse judgment against them, including any denial, or voluntary surrender, withdrawal, or resignation of a credential in lieu of disciplinary action (Section R4-46-403).

A.R.S. § 41-1055(B)(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 proposed rulemaking.

The Department does not anticipate any impact on the private employment of appraisers, appraisal management companies, course owners, or property tax agents. Likewise, the Department does not anticipate any impact on public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

Appraisers, Appraisal Management Companies, Course Owners, and Property Tax Agents are all potentially small businesses subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The Department did not receive any information from licensees on administrative or other costs required for compliance with the proposed rulemaking. Most costs are imposed by the correlate statutes (A.R.S. §§ 32-3601 through 32-3680). The reporting costs associated with compliance by appraisers, property tax agents, and appraisal management companies under Sections R4-46-209 and R4-46-403 are expected to be minimal because the events triggering the reporting requirement are expected to be rare.

(c) A description of the methods prescribed in section 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 to use each method.

The Department does not believe that any of the methods listed at A.R.S. § 41-1035 are useful to reduce the impact of the rulemaking on small businesses because the events triggering the reporting requirements imposed by the rules alone are expected to be rare and effect only a small number of licensees.

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

The Department does not expect any appreciable increase in either costs or benefits to private persons and consumers created by this rulemaking. The costs and benefits to private persons and consumers are expected to be the same as those identified during the original adoption of these rules.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A 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 Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking which is to effectively regulate Appraisers, Appraisal Management Companies, Course Owners, and Tax Property Agents.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rule is not based on any data.

THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA

AND INTERPRETATIONS OF THE CRITERIA

Real Property Appraiser Qualification Criteria
Effective January 1, 2022

Appendix:
AQB Guide Notes



The Appraisal
FOUNDATION

Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications

APPRAISER QUALIFICATIONS BOARD

VISION AND MISSION STATEMENT OF THE APPRAISAL FOUNDATION

VISION STATEMENT

To ensure public trust in the valuation profession.

Mission Statement

The Appraisal Foundation is dedicated to promoting professionalism and ensuring public trust in the valuation profession. This is accomplished through the promulgation of standards, appraiser qualifications, and guidance regarding valuation methods and techniques.

The Appraisal Foundation is the nation's foremost authority on the valuation profession. The organization sets the Congressionally-authorized standards and qualifications for real estate appraisers, and provides voluntary guidance on recognized valuation methods and techniques for all valuation professionals. This work advances the profession by ensuring appraisals are independent, consistent, and objective. More information on The Appraisal Foundation is available at www.appraisalfoundation.org.

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WHAT IS THE AQB?

The Appraiser Qualifications Board (AQB) is an independent board of The Appraisal Foundation (Foundation). The AQB is comprised of at least five practicing appraisers who are appointed by the Foundation's Board of Trustees for one- to three-year terms.

Under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the AQB establishes the minimum education, experience, and examination requirements for real property appraisers to obtain a state license or certification as well as Supervisory Appraiser requirements. In addition, the AQB performs a number of ancillary duties related to real property and personal property appraiser qualifications (see "Other AQB Work" on page 5).

REAL PROPERTY APPRAISER QUALIFICATION CRITERIA, INTERPRETATIONS OF THE CRITERIA, GUIDE NOTES, AND Q&As

States are required to implement appraiser licensing and certification requirements that are no less stringent than those issued by the AQB in the *Real Property Appraiser Qualification Criteria (Criteria)*.

The AQB has statutory authority to develop mandatory *Criteria* for Supervisory Appraisers (not an appraiser credential classification) and the Trainee Appraiser, Licensed Residential, Certified Residential, and Certified General appraiser classifications. If a state has these classifications, they are required to adopt these *Criteria*, at a minimum, for appraisals performed in federally-related transactions.

The original *Criteria*, adopted by the AQB in March 1991, included the following classifications: Licensed Residential, Certified Residential, and Certified General. Each of these classifications included requirements for education, experience, and an examination. The Trainee Appraiser classification was adopted by the AQB in 1993 and does not include experience or examination requirements.

After public exposure, the AQB adopted revisions to all classifications in early 1994 for implementation in January 1998. Major components of the revised *Criteria* included:

- An increase in the qualifying education requirements for the Licensed Residential and Certified General classifications;
- The requirement that all real property appraisers take the *15-Hour National Uniform Standards of Professional Appraisal Practice (USPAP) Course*;
- An increase in the experience requirements for the Certified Residential and Certified General Classifications from 2,000 to 2,500 hours, and from 2,000 to 3,000 hours, respectively; and
- An increase in the annual continuing education requirement from 10 to 14 classroom hours for all classifications.

After thorough public exposure, the AQB adopted significant revisions to the *Criteria* in early 2004 for implementation in January 2008. Highlights of the major revisions include:

- An increase in the qualifying education requirements for the Licensed Residential, Certified Residential, and Certified General classifications. The required education hours were raised from 90 to 150 hours for the Licensed Residential classification, 120 to 200 hours for the Certified Residential classification, and 180 to 300 hours for the Certified General classification; and
- A requirement for college-level education for the Certified Residential and Certified General classifications. The Certified Residential classification required an Associate degree or higher; or in lieu of a degree, a minimum of 21 college semester hours in specified coursework. The Certified General required a Bachelor's degree or higher, or in lieu of a degree, a minimum of 30 semester hours in specified college course work.

After five exposure drafts, in December 2011 the AQB adopted revisions to the *Criteria* for implementation in January 2015. Major revisions include:

- Education and experience must be completed prior to taking the *National Uniform Licensing and Certification Examinations*;
- Applicants for the Certified Residential and Certified General classifications must have a Bachelor’s degree or higher from an accredited college or university;
- Applicants for the Licensed Residential classification must successfully complete 30 semester hours of college-level education from an accredited college, junior college, community college, or university, or have an Associate’s degree or higher from an accredited college, junior college, community college, or university;
- Recognition of university degree programs as counting toward the education requirements in the *Criteria*;
- Removal of the “Segmented” Approach to implementation of the *Criteria*;
- Prohibition of repetitive continuing education within the same continuing education cycle;
- Clarification of the term “written examination”;
- Revisions to the Trainee Appraiser classification that include a requirement to take a course oriented to the requirements and responsibilities of Trainee Appraisers and Supervisory Appraisers;
- New Supervisory Appraiser requirements;
- Revisions to Guide Note 1; and
- Additions to the illustrative list of educational topics acceptable for continuing education.

In July 2015, the AQB issued a Concept Paper exploring alternative requirements to the *Criteria*. In October 2015, the AQB held a Public Hearing with major stakeholders of the *Criteria*. In the following two years, the AQB issued a Discussion Draft and four Exposure Drafts of proposed changes to the 2015 *Criteria*. On February 1, 2018, the AQB adopted revisions to the *Criteria*. Major revisions include:

- Elimination of college-level education requirements for the Licensed Residential Real Property classification;
- Alternative college-level education requirements for the Certified Residential Real Property classification;
- An alternative track for Licensed Residential Real Property Appraisers to move to the Certified Residential Real Property Appraiser classification; and
- Modification of experience hours and experience time frames for the Licensed Residential and Certified Residential classifications, and modification of the experience time frame for the Certified General classification.

In April 2019, the AQB issued an Exposure Draft of a proposed Interpretation relating to qualification requirements for Supervisory Appraisers. The AQB issued a second Exposure Draft on this topic in September 2019. At its November 1, 2019 public meeting, the Board adopted the Interpretation in the second Exposure Draft. The Interpretation clarified that Supervisory Appraisers who have been imposed discipline for “administrative” reasons (as opposed to “practice-related” reasons) would still be eligible to supervise.

Interpretations of the Criteria and Q&As

To further clarify AQB intent to users of the *Criteria*, the AQB may issue Interpretations of the *Criteria*. Interpretations are essential to properly understanding the *Criteria* and are, therefore, binding on users of the *Criteria*. Interpretations are added to the text of this document subsequent to their adoption by the AQB. These Interpretations are listed in subject matter order, which is designed to follow the applicable *Criteria*. As a result, the dates reflecting the adoption of some Interpretations may not follow a chronological sequence.

The AQB also issues Q&As which are published periodically and available on The Appraisal Foundation website. The Q&As are a form of guidance issued by the AQB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of the *Real Property Appraiser Qualification Criteria* and Interpretations of the *Criteria* in specific situations and to offer advice from the AQB for the resolution of appraisal issues and problems. The AQB Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. AQB Q&A does not establish new *Criteria*. AQB Q&A is not part of the *Real Property Appraiser Qualification Criteria*. AQB Q&A is approved by the AQB without public exposure and comment. To review the latest AQB Q&As, please visit the Q&A webpage located on the Foundation’s website at www.appraisalfoundation.org.

Supporting the Work of the AQB

The AQB strongly encourages input from appraisers, users of appraisal services, and the public through the exposure draft process, public meetings, speaking engagements, and correspondence. Detailed information on how to support the work of the AQB is available online via the Foundation's website at www.appraisalfoundation.org, or by contacting the Board's staff at the Foundation by calling (202) 347-7722, or via e-mail at AQB@appraisalfoundation.org.

Exposure Draft Process

In recognition of the public authority of the AQB, all proposed revisions to the *Criteria* must be exposed for public comment prior to adoption. The AQB considers all comments in public meetings prior to taking final action. Prior to publication of an exposure draft, all proposed revisions to the *Criteria* are reviewed by a regulatory attorney.

Public Meetings

The AQB conducts periodic public meetings. Observers are encouraged to attend and, if time permits, address the Board regarding an agenda item.

Speaking Engagements

Members of the AQB are available for speaking engagements and presentations on the current work of the Board. Invitations to speak may be submitted via the "Request a Speaker" section on The Appraisal Foundation's website (www.appraisalfoundation.org). These requests should be submitted as early as possible in order to facilitate scheduling.

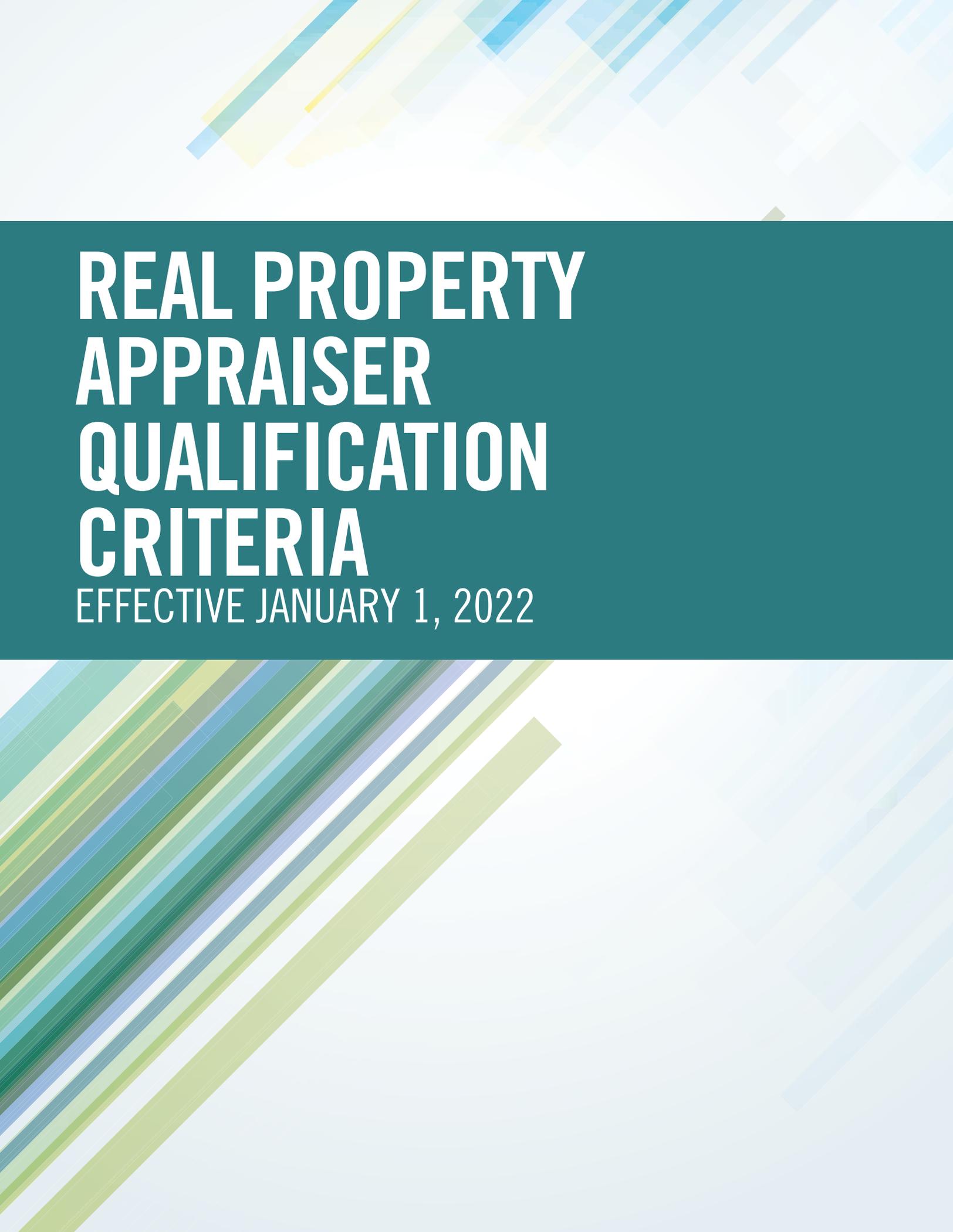
Other AQB Work

In addition to its work on the *Criteria*, the AQB is involved in numerous other ongoing projects, including:

- Maintenance and periodic updating of the *National Uniform Licensing and Certification Examinations* and their accompanying Examination Content Outlines (ECO's). The ECO's are used in the development of the examinations.
- Development of and enhancements to the Program to Improve USPAP Education.
- Administration of the Course Approval Program (CAP).
- Administration of the Real Estate Degree Review Program.
- Development of **voluntary** minimum *Personal Property Appraiser Qualification Criteria*.

More information on The Appraisal Foundation and the activities of the AQB is available online at www.appraisalfoundation.org or by contacting the Board's staff at The Appraisal Foundation by phone at (202) 347-7722 or via e-mail at AQB@appraisalfoundation.org.

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REAL PROPERTY APPRAISER QUALIFICATION CRITERIA

EFFECTIVE JANUARY 1, 2022

DEFINITIONS:

Real Property Appraiser Qualification Criteria (Criteria): Established by the Appraiser Qualifications Board (AQB) of The Appraisal Foundation, these *Criteria* set forth the minimum education, experience, and examination requirements for real property appraisers.

Required Core Curriculum: A set of major appraisal subject matter headings, known as “modules,” which require a specified number of educational hours at each credential level.

For example, as part of the Required Core Curriculum, a minimum of 30 hours of coverage of the module “Basic Appraisal Principles” is required.

Subtopics: Areas of appraisal education (as identified in AQB Guide Note 1) that may be included within the modules of the *Required Core Curriculum*.

As Guide Note 1 is not a binding requirement, coverage of the subtopics is not required for educational offerings to be valid; however, individuals will be expected to demonstrate competency in the subtopics in order to pass the respective licensing or certification examinations.

Interpretations: Elaborations or clarifications of the *Criteria* issued by the AQB. Interpretations are essential to a proper understanding of the requirements set forth in the *Criteria* and are, therefore, binding upon users of the *Criteria*.

Guide Notes: Guidance or advice provided by the AQB for assistance in understanding and implementing the *Criteria*.

For example, AQB Guide Note 1 (GN-1) “AQB Guidance for Curriculum Content” provides state appraiser regulators, students, and educators with suggested subtopics and items of coverage for each module in the Required Core Curriculum. The subtopics identified in Guide Note 1 represent those areas of education in which appraisers should be able to demonstrate competency to pass the respective licensing or certification examinations.

GENERAL INTERPRETATIONS

- A. The following is an exception for implementing the *Real Property Appraiser Qualification Criteria*:
An applicant in the Reserve components of the U.S. Armed Forces, who was pursuing an appraiser license or certification prior to December 1, 2011, and who was called to active duty between December 1, 2011 and December 31, 2014, may satisfy the qualifications required under the 2008 Criteria for an additional time period after January 1, 2015. The extension of time shall be equal to the applicant’s time of active duty, plus 12 months.
- B. The following is a clarification of the existing *Real Property Appraiser Qualification Criteria*:
With respect to the prerequisites needed before an applicant takes the National Uniform Licensing and Certification Examinations as referenced in the various sections II. B., applicants must have all experience and education completely verified by the appropriate state appraiser regulatory agency prior to taking the National Exam. Applicants cannot self-verify experience.

CRITERIA APPLICABLE TO ALL APPRAISER CLASSIFICATIONS

I. Standards of Practice

Appraisers in all classifications shall perform and practice in compliance with the *Uniform Standards of Professional Appraisal Practice* (USPAP).

II. Existing Credential Holders

Existing credential holders (with the exception of Trainee Appraisers) in good standing in any jurisdiction shall be considered in compliance with current Appraiser Qualifications Board *Real Property Appraiser Qualification Criteria* (*Criteria*) if they have passed an AQB-approved qualifying examination for that credential. This applies to reciprocity, temporary practice, renewals, and applications for the same credential (with the exception of Trainee Appraisers) in another jurisdiction. All credential holders must comply with ongoing requirements for continuing education and state renewal procedures.

III. Generic Education Criteria

- A. Class hour
 1. A class hour is defined as 60 minutes, of which at least 50 minutes are instruction attended by the student.
 2. The prescribed number of class hours includes time for examinations.

- B. Credit for the class hour requirements may be obtained only from the following providers:
1. Colleges or universities;
 2. Community or junior colleges;
 3. Real estate appraisal or real estate-related organizations;
 4. State or federal agencies or commissions;
 5. Proprietary schools;
 6. Providers approved by state certification/licensing agencies; or
 7. The Appraisal Foundation or its Boards.
- C. Experience may not be substituted for education.
- D. Distance education is defined as any education process based on the geographical separation of student and instructor. Components of distance education include synchronous, asynchronous, and hybrid. In synchronous educational offerings, the instructor and students interact simultaneously online, similar to a phone call, video chat or live webinar, or web-based meeting. In asynchronous educational offerings, the instructor and student interaction is non-simultaneous; the students progress at their own pace and follow a structured course content and quiz/exam schedule. Hybrid courses, also known as blended courses, are learning environments that allow for both in-person and online (synchronous, or asynchronous) interaction.

Synchronous courses provide for instruction and interaction substantially the same as on-site classroom courses. Synchronous courses meet class hour requirements if they comply with requirements III.A and III.B.

An asynchronous distance education course is acceptable to meet class hour requirements if:

1. The course provides interaction. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor; and
 2. Content approval is obtained from the AQB, a state appraiser regulatory jurisdiction, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the US Secretary of Education. Non-academic credit college courses provided by a college shall be approved by the AQB or the state appraiser regulatory jurisdiction; and
 3. Course delivery mechanism approval is obtained from one of the following sources:
 - a. The AQB; or
 - b. AQB approved organizations providing approval of course design and delivery (such as The Appraisal Foundation or other independent approved entity); or
 - c. a college or university that qualifies for content approval in paragraph 2 above that awards academic credit for the distance education course; or
 - d. a qualifying college or university for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.
 4. Hybrid courses meet class hour requirements if each of its sessions meet the requirement for the delivery method employed:
 - a. in-person course sessions must meet III.A. and III.B.
 - b. synchronous course sessions must meet III.A. and III.B.
 - c. asynchronous courses sessions must meet III.A., III.B., and III.D.1-3
- E. *Criteria Specific to Qualifying Education*
1. Class hours will be credited only for educational offerings with content that follows the *Required Core Curriculum* for each respective credential classification. Course content requirements may be general or specific to property types. The *Required Core Curriculum* is to be followed by major headings with the classroom hours for each. Guide Note (GN-1) contains guidance for curriculum content with subtopics listed under each major module. The subtopics listed in GN-1 are used for developing Examination Content Outlines for each applicable credential classification, and may also be amended from time to time to reflect changes in technology or in the Body of Knowledge. GN-1 is not mandatory for meeting the *Required Core Curriculum*.
 2. Credit toward qualifying education requirements may also be obtained via the completion of a degree in Real Estate from an accredited degree-granting college or university approved by the Association to Advance Collegiate Schools of Business, or a regional or national accreditation agency recognized by the

US Secretary of Education, **provided that the college or university has had its curriculum reviewed and approved by the AQB.**

The AQB may maintain a list of approved college or university degree programs, including the *Required Core Curriculum* and Appraisal Subject Matter Elective hours satisfied by the award of the degree. Candidates for the Trainee Appraiser, Licensed Residential, Certified Residential, or Certified General credential who are awarded degrees from approved institutions are required to complete all additional education required for the credential in which the approved degree is judged to be deficient by the AQB.

3. Class hours may be obtained only where:
 - a. the minimum length of the educational offering is at least 15 hours; and
 - b. the individual successfully completes a proctored, closed-book final examination pertinent to that educational offering.
 4. Where the qualifying education course includes multiple modules as listed in the *Required Core Curriculum*, there must be appropriate testing of each module included in the course.
 5. Courses taken to satisfy the qualifying education requirements must not be repetitive. Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method when applicable.
 6. Applicants must take the *15-Hour National USPAP Course*, or its AQB-approved equivalent, and pass the associated *15-Hour National USPAP Course* examination. At least one of the course instructors must be an AQB Certified USPAP Instructor who is also a state certified appraiser in good standing. Course equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP education presented in a distance education format must be designed to foster appropriate student-to-student, student-to-instructor, and student-to-material interaction.
 7. In addition to the generic requirements described in III.D., distance education courses intended for use as qualifying education must include a written, closed-book final examination. The examination must be proctored in person or remotely by an official approved by the college or university, or by the sponsoring organization. Bio-metric proctoring is acceptable.¹ The term, "written," as used herein, refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable. The testing must comply with the examination requirements of this section.
- F. *Criteria Specific to Continuing Education*
1. The purpose of continuing education is to ensure that appraisers participate in a program that maintains and increases their skill, knowledge, and competency in real property appraising.

Aside from complying with the requirements to complete the *7-Hour National USPAP Update Course*, or its equivalent, appraisers may not receive credit for completion of the same continuing education course offering within the same continuing education cycle.
 2. Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two (2) hours.
 3. Credit may be granted for education offerings that are consistent with the purpose of continuing education and cover real property related appraisal topics, including, but not limited to:
 - a. Ad valorem taxation;
 - b. Arbitration, dispute resolution;
 - c. Courses related to the practice of real estate appraisal or consulting;
 - d. Development cost estimating;
 - e. Ethics and standards of professional practice, USPAP;
 - f. Valuation bias, fair housing, and/or equal opportunity;
 - g. Land use planning, zoning;
 - h. Management, leasing, timesharing;

¹ Bio-metric proctoring process provides that student identity is continually verified through processes, such as facial recognition, consistency in keystroke cadence, and the observation of activity in the testing location. Aberrant behavior or activity can be readily observed.

- i. Property development, partial interests;
 - j. Real estate law, easements, and legal interests;
 - k. Real estate litigation, damages, condemnation;
 - l. Real estate financing and investment;
 - m. Real estate appraisal-related computer applications;
 - n. Real estate securities and syndication;
 - o. Developing opinions of real property value in appraisals that also include personal property and/or business value;
 - p. Seller concessions and impact on value; and/or
 - q. Energy-efficient items and “green building” appraisals.
4. Up to one half of an individual’s continuing education requirement may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle.
 5. Educational offerings taken by an individual in order to fulfill the class hour requirement for a different classification than his/her current classification may be simultaneously counted towards the continuing education requirement of his/her current classification.
 6. In addition to the generic requirements described in III.D., asynchronous distance education courses intended for use as continuing education must include at least one of the following:
 - a. A written examination proctored by an official approved by the college or university, or by the sponsoring organization. Remote proctoring, including bio-metric procedures as noted in III E. 7. above, is acceptable. The term “written” as used herein refers to an exam that might be written on paper, or administered electronically on a computer workstation or other device. Oral exams are not acceptable; or
 - b. Successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter.
 7. Real estate appraisal-related field trips may be acceptable for credit toward the continuing education requirements. However, transit time to or from the field trip may not be included when awarding credit unless instruction occurs during said transit time.
 8. Appraisers must successfully complete the *7-Hour National USPAP Update Course*, or its AQB-approved equivalent, every two calendar years. Equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB.
 9. Individuals who are credentialed in more than one jurisdiction shall not have to take more than one *7-Hour National USPAP Update Course* within a two calendar year period for the purposes of meeting AQB *Criteria*.
 10. USPAP continuing education credit shall only be awarded when the course is instructed by at least one AQB Certified USPAP Instructor who is also a state certified appraiser in good standing.
 11. The equivalent of fourteen (14) class hours of instruction in courses or seminars for each year during the period preceding the renewal is required. For example, a two-year continuing education cycle would require twenty-eight hours. The class hour requirement can be fulfilled at any time during the cycle.
 12. AQB Certified USPAP Instructors successfully completing a *7-Hour Instructor Recertification Course* and exam (if required) within their current continuing education cycle have satisfied the *7-Hour National USPAP Update Course* continuing education requirement.
 13. State appraiser regulatory agencies with the appropriate authority to do so may place a credential holder in an “inactive status” in the event the state determines a deficiency in continuing education was due to extenuating circumstances.

Prior to reactivation, credential holders in an inactive status must complete all required continuing education hours that would have been required if the credential holder was in an active status. The

required hours must also include the most recent edition of a *7-Hour National USPAP Update Course* (or its AQB-approved equivalent).

Waivers may not be granted to credential holders who have failed to meet the continuing education requirements.

Deferrals may not be granted to credential holders, except in the case of individuals returning from active military duty, or individuals impacted by a state- or federally-declared disaster. State appraiser regulatory agencies may allow credential holders returning from active military duty to be placed in active status for a period of up to 90 days pending completion of all continuing education requirements. State appraiser regulatory agencies may allow credential holders impacted by a state- or federally-declared disaster that occurs within 90 days prior to the end of the continuing education cycle to remain (or be placed in) active status for a period of up to 90 days after the end of the credential holder's continuing education cycle, pending completion of all continuing education requirements.

14. Credentialed appraisers are required to complete continuing education for a partial year in a continuing education cycle as follows:

For continuing education cycle periods of 185 days or more, 14 hours of continuing education is required.

For continuing education cycle periods of less than 185 days, no hours of continuing education are required.

Example #1: A credential issued on August 15 that expires on December 31 of the same year would not require any continuing education hours for that year.

Example #2: A credential issued on May 15 that expires on December 31 of the same year would require 14 continuing education hours for that year.

Example #3: A credential issued on August 15 that expires on December 31 of the following year would require 14 hours of continuing education to renew.

15. State appraiser regulatory agencies may award continuing education credit to credentialed appraisers who attend a state appraiser regulatory agency meeting, under the following conditions:
 - a. Credit may be awarded for a single state appraiser regulatory agency meeting per continuing education cycle. The meeting must be open to the public and must be a minimum of two (2) hours in length. The total credit cannot exceed seven (7) hours; and
 - b. The state appraiser regulatory agency must ensure that the credentialed appraiser attends the meeting for the required period of time.

IV. Generic Examination Criteria

A new applicant not currently licensed or certified and in good standing in another jurisdiction shall have up to 24 months, after approval by the state, to take and pass an AQB-approved qualifying examination for the credential. Successful completion of the examination is valid for a period of 24 months.

V. Generic Experience Criteria

- A. Education may not be substituted for experience, except as shown below in Section D below.
- B. The quantitative experience requirements must be satisfied by time spent in the appraisal process. The appraisal process consists of: analyzing factors that affect value; defining the problem; gathering and analyzing data; applying the appropriate analysis and methodology; and arriving at an opinion and correctly reporting the opinion in compliance with USPAP.
- C. Hours may be treated as cumulative in order to achieve the necessary number of hours of appraisal experience.
 1. Cumulative is defined as experience that may be acquired over multiple time periods.
 2. The following is an example of cumulative experience:

Year 1	200 Hours
Year 2	800 Hours
Year 3	600 Hours
Year 4	400 Hours
Year 5	500 Hours
Total	2,500 Hours

- D. There need not be a client in a traditional sense (e.g., a client hiring an appraiser for a business purpose) in order for an appraisal to qualify for experience. Experience gained for work without a traditional client can meet any portion of the total experience requirement.
- E. Practicum courses that are approved by the AQB Course Approval Program or state appraiser regulatory agencies can satisfy the non-traditional client experience requirement. A practicum course must include the generally applicable methods of appraisal practice for the credential category. Content includes, but is not limited to: requiring the student to produce credible appraisals that utilize an actual subject property; performing market research containing sales analysis; and applying and reporting the applicable appraisal approaches in conformity with USPAP. Assignments must require problem solving skills for a variety of property types for the credential category.

Experience credit shall be granted for the actual classroom hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.

- F. An hour of experience is defined as verifiable time spent in performing tasks in accordance with acceptable appraisal practice. Acceptable real property appraisal practice for experience credit includes appraisal, appraisal review, appraisal consulting, and mass appraisal.

All experience must be obtained after January 30, 1989, and must be USPAP-compliant. An applicant's experience must be in appraisal work conforming to Standards 1, 2, 3, 4, 5, and/or 6, where the appraiser demonstrates proficiency in appraisal principles, methodology, procedures (development), and reporting conclusions.

- G. Documentation in the form of reports, certifications, or file memoranda, or, if such reports and memoranda are unavailable for good cause, other evidence at the credentialing authority's discretion that the work is compliant with USPAP must be provided as part of the state experience verification process to support the experience claimed.
- H. The verification for experience credit claimed by an applicant shall be on forms prescribed by the state certification/licensing agency, which shall include:
 1. Type of property;
 2. Date of report;
 3. Address of appraised property;
 4. Description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;
 5. Number of actual work hours by the trainee/applicant on the assignment; and
 6. The signature and state certification number of the supervising appraiser, if applicable. Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.
- I. There is no maximum time limit during which experience may be obtained.

VI. Practical Applications of Real Estate Appraisal (PAREA)

Practical Applications of Real Estate Appraisal (PAREA) programs approved by the AQB utilize simulated experience training, and serve as an alternative to the traditional Supervisor/Trainee experience model, under Section V. To qualify as creditable experience, AQB-approved PAREA programs shall:

1. Contain, at a minimum, the content specified in the Practical Applications of Real Estate Appraisal section of this Criteria;
2. Require participants to possess the following prerequisites prior to commencement of training:
 - a. For the Licensed Residential Module: 150 hours of qualifying education as specified in the Required Core Curriculum for the Licensed Residential Real Property Appraiser classification.
 - b. For the Certified Residential Module: 200 hours of qualifying education as specified in the Required Core Curriculum for the Certified Residential Real Property Appraiser classification; and
 - i. Possession of a valid Licensed Residential Real Property Appraiser credential; or
 - ii. Successful completion of an AQB-approved PAREA program for the Licensed Residential Real Property Appraiser classification;
3. Provide an adequate number of Mentors to ensure timely and competent mentoring for all program participants;

4. Ensure Mentors meet or exceed the following qualifications:
 - a. Mentors shall be state-certified appraisers and in “good standing” for a period of at least three (3) years prior to being eligible to become a Mentor; and
 - b. Mentors shall not have been subject to any disciplinary action, within any jurisdiction, within the last three (3) years that affected the Mentor’s legal eligibility to engage in appraisal practice, or to act as a Supervisory Appraiser. A Mentor subject to a disciplinary action would be considered to be in “good standing” three (3) years after the successful completion/termination of the imposed sanction; and
5. Ensure program participants produce appraisal reports that comply with USPAP, and meet or exceed the following requirements:
 - a. Licensed Residential
 - i. No fewer than three (3) appraisal reports;
 - ii. Reports must represent a variety of assignment types and property types that are consistent with the Licensed Residential program content; and
 - iii. Reports must comply with the edition of USPAP that is in effect at the time.
 - b. Certified Residential
 - i. No fewer than three (3) appraisal reports;
 - ii. Reports must represent a variety of assignment types and property types that are consistent with the Certified Residential program content; and
 - iii. Reports must comply with the edition of USPAP that is in effect at the time; and
6. Provide each program participant that successfully completes PAREA training with a certificate of completion, subject to the following:
 - a. Participants may not receive partial credit for PAREA training;
 - b. Participants may not receive a certificate of completion until all required components of PAREA training have been successfully completed and approved by a program Mentor;
 - c. Certificates of completion must be signed by an individual from the training entity qualified to verify a participant’s successful completion; and
 - d. Certificates of completion must not contain an expiration date or other constraints that either limit or restrict the participant’s ability to receive appropriate credit; and
7. Allow participants successfully completing approved PAREA programs to receive the following experience credit:
 - a. For participants completing an approved Licensed Residential program:
 - i. Licensed Residential classification: up to 100 percent of the required experience hours.
 - ii. Certified Residential classification: up to 67 percent of the required experience hours.
 - iii. Certified General classification: up to 33 percent of the total required experience, none of which is eligible towards the required non-residential hours.
 - b. For participants completing an approved Certified Residential program:
 - i. Licensed Residential classification: up to 100 percent of the required experience hours.
 - ii. Certified Residential classification: up to 100 percent of the required experience hours.
 - iii. Certified General classification: up to 50 percent of the total required experience, none of which is eligible towards the required non-residential hours.

VII. Background Checks

- A. All applicants for a real property appraiser credential shall possess a background that would not call into question public trust.
- B. Applicants shall provide state appraiser regulatory agencies with all of the information and documentation necessary for the jurisdiction to determine the applicant’s fitness for licensure or certification.
- C. An applicant shall not be eligible for a real property appraiser credential if, during at least the five (5) year period immediately preceding the date of the application for licensing or certification, the applicant has been convicted of, or pled guilty or nolo contendere to a crime that would call into question the applicant’s fitness for licensure.
- D. Additional guidance related to background checks for applicants for a real property appraiser credential may be found in Guide Note 9 (GN-9).

VIII. Interpretations and Guide Notes (GN)

Periodically, the AQB may issue Interpretations to the *Criteria* (binding) or Guide Notes (advisory) on interpretations or application of the *Criteria*.

SUPERVISORY APPRAISER REQUIREMENTS

APPLICABLE TO SUPERVISION OF **TRAINEE APPRAISERS** ONLY

Supervisory Appraisers provide a critical role in the mentoring, training, and development of future valuation professionals. It is inherently important to strike a proper balance between enhancing public trust by ensuring Supervisory Appraisers are competent and qualified to supervise Trainee Appraisers without making the criteria too stringent and restrictive as to discourage or prevent qualified Supervisory Appraisers from actually participating in the training and supervision of Trainee Appraisers.

I. General

- A. Supervisory Appraisers shall be responsible for the training, guidance, and direct supervision of the Trainee Appraiser by:
 1. Accepting responsibility for the appraisal by signing and certifying the appraisal complies with USPAP;
 2. Reviewing and signing the Trainee Appraiser appraisal report(s); and
 3. Personally inspecting each appraised property with the Trainee Appraiser until the Supervisory Appraiser determines the Trainee Appraiser is competent to inspect the property, in accordance with the COMPETENCY RULE of USPAP for the property type.

- B. Supervisory Appraisers shall be state-certified and in “good standing” for a period of at least three (3) years prior to being eligible to become a Supervisory Appraiser. Supervisory Appraisers do not need to be state certified and in good standing *in the jurisdiction* in which the Trainee Appraiser practices **for any specific minimum period of time**. Supervisory Appraisers shall not have been subject to any disciplinary action—within any jurisdiction—within the last three (3) years that affected the Supervisory Appraiser’s legal eligibility to engage in appraisal practice. A Supervisory Appraiser subject to a disciplinary action would be considered to be in “good standing” three (3) years *after* the successful completion/termination of the sanction imposed against the appraiser.

Supervisory Appraiser Requirements Interpretation

With respect to disciplinary sanctions that affect an individual’s legal eligibility to practice as referenced in Section 1.B. above, sanctions imposed as a result of administrative actions not related to an individual’s obligations of ethical and competent appraisal practice do not apply. Examples may involve isolated administrative responsibilities including late payment of fees, failure to timely renew a credential, or failure to notify a regulatory office of a change in contact information. The intent of the language stated in Section 1.B. above, was to prevent Supervisory Appraisers from training due to egregious appraisal practice issues that involved ethics and competency. Administrative infractions do not preclude an individual from acting as a Supervisory Appraiser for three years after the sanction.

- C. Supervisory Appraisers must comply with the COMPETENCY RULE of USPAP for the property type and geographic location where the Trainee Appraiser is being supervised.

- D. Whereas a Trainee Appraiser is permitted to have more than one Supervisory Appraiser, Supervisory Appraisers may not supervise more than three (3) Trainee Appraisers at one time, unless a state program in the credentialing jurisdiction provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for Supervisory Appraisers.

- E. An appraisal experience log shall be maintained jointly by the Supervisory Appraiser and the Trainee Appraiser. It is the responsibility of both the Supervisory Appraiser and Trainee Appraiser to ensure the experience log is accurate, current, and complies with the requirements of the Trainee Appraiser's credentialing jurisdiction. At a minimum, the appraisal log requirements shall include:
1. Type of property;
 2. Date of report;
 3. Address of appraised property;
 4. Description of work performed by the Trainee Appraiser and the scope of the review and supervision of the Supervisory Appraiser;
 5. Number of actual work hours by the Trainee Appraiser on the assignment; and
 6. The signature and state certification number of the Supervisory Appraiser. Separate appraisal logs shall be maintained for each Supervisory Appraiser, if applicable.
- F. Supervisory Appraisers shall be required to complete a course that, at a minimum, complies with the specifications for course content established by the AQB, which is specifically oriented to the requirements and responsibilities of Supervisory Appraisers and Trainee Appraisers. The course is to be completed by the Supervisory Appraiser prior to supervising a Trainee Appraiser. Please refer to the Supervisory Appraiser / Trainee Appraiser Course Objectives and Outline in this booklet for more information.

REAL PROPERTY APPRAISER CLASSIFICATIONS

TRAINEE REAL PROPERTY APPRAISER

Please consult the **CRITERIA APPLICABLE TO ALL APPRAISER CLASSIFICATIONS** for additional requirements.

I. General

- A. The Trainee Appraiser classification is intended to incorporate any documented non-certified/non-licensed real property appraisers who are subject to the *Real Property Appraiser Qualification Criteria*. Recognizing that individual credentialing jurisdictions may use different terminologies, “Trainee Appraisers” include, but are not limited to: registered appraisers, apprentice appraisers, provisional appraisers, or other similar designations created by state appraiser regulatory agencies.
- B. The scope of practice for the Trainee Appraiser classification is the appraisal of those properties which the state-certified Supervisory Appraiser is permitted by his/her current credential and that the Supervisory Appraiser is competent to appraise.
- C. The Trainee Appraiser, as well as the Supervisory Appraiser, shall be entitled to obtain copies of appraisal reports and/or permitted appropriate access and retrieval arrangements for all workfiles for appraisals in which he or she participated, in accordance with the RECORD KEEPING RULE of USPAP.
- D. All Trainee Appraisers must comply with the COMPETENCY RULE of USPAP for all assignments.

II. Examination

There is no examination requirement for the Trainee Appraiser classification, but the Trainee Appraiser shall pass the appropriate end-of-course examinations in all of the prerequisite qualifying education courses in order to earn credit for those courses.

III. Qualifying Education

- A. As the prerequisite for application, an applicant must have completed seventy-five (75) hours of qualifying education as specified in the *Required Core Curriculum*. Additionally, applicants must pass the course examinations and pass the *15-Hour National USPAP Course* (or its AQB-approved equivalent) and examination as part of the 75 hours. All qualifying education must be completed within the five (5) year period immediately preceding the date of application for a Trainee Appraiser credential.
- B. Appraisers holding a valid **Licensed Residential Real Property Appraiser** credential satisfy the educational requirements for the Trainee Appraiser credential.

- C. Appraisers holding a valid **Certified Residential Real Property Appraiser** credential satisfy the educational requirements for the Trainee Appraiser credential.
- D. Appraisers holding a valid **Certified General Real Property Appraiser** credential satisfy the educational requirements for the Trainee Appraiser credential.

IV. Experience

No experience is required as a prerequisite for the Trainee Appraiser classification.

V. Training

- A. The Trainee Appraiser shall be subject to direct control and supervision by a Supervisory Appraiser in good standing, who shall be state certified. A Trainee Appraiser is permitted to have more than one Supervisory Appraiser.
- B. The Supervisory Appraiser shall be responsible for the training, guidance, and direct control and supervision of the Trainee Appraiser by:
 1. Accepting responsibility for the appraisal by signing and certifying the appraisal complies with USPAP;
 2. Reviewing and signing the Trainee Appraiser appraisal report(s); and
 3. Personally inspecting each appraised property with the Trainee Appraiser until the Supervisory Appraiser determines the Trainee Appraiser is competent to inspect the property, in accordance with the COMPETENCY RULE of USPAP for the property type.
- C. The Trainee Appraiser is permitted to have more than one Supervisory Appraiser, but a Supervisory Appraiser may not supervise more than three (3) Trainee Appraisers, at one time, unless a program in the state appraiser regulatory jurisdiction provides for progress monitoring, supervising certified appraiser qualifications, and supervision and oversight requirements for Supervisory Appraisers.
- D. An appraisal experience log shall be maintained jointly by the Supervisory Appraiser and the Trainee Appraiser. It is the responsibility of both the Supervisory Appraiser and the Trainee Appraiser to ensure the appraisal experience log is accurate, current, and complies with the requirements of the Trainee Appraiser's credentialing jurisdiction. At a minimum, the appraisal log requirements shall include:
 1. Type of property;
 2. Date of report;
 3. Address of appraised property;
 4. Description of work performed by the Trainee Appraiser and scope of the review and supervision of the Supervisory Appraiser;
 5. Number of actual work hours by the Trainee Appraiser on the assignment; and
 6. The signature and state certification number of the Supervisory Appraiser. Separate appraisal logs shall be maintained for each Supervisory Appraiser, if applicable.
- E. Supervisory Appraisers shall be state certified and in good standing for a period of at least three (3) years prior to being eligible to become a Supervisory Appraiser. Supervisory Appraisers do not need to be state certified and in good standing **in the jurisdiction** in which the Trainee Appraiser practices **for any specific minimum period of time**. Supervisory Appraisers shall not have been subject to any disciplinary action—within any jurisdiction—within the last three (3) years that affected the Supervisory Appraiser's legal eligibility to engage in appraisal practice. A Supervisory Appraiser subject to a disciplinary action would be considered to be in "good standing" three (3) years after the successful completion/termination of the sanction imposed against the appraiser.
- F. Trainee Appraisers shall be required to complete a course that, at minimum, complies with the specifications for course content established by the AQB, which is specifically oriented to the requirements and responsibilities of Supervisory Appraisers and Trainee Appraisers. The course must be completed by the Trainee Appraiser prior to obtaining a Trainee Appraiser credential from the individual credentialing jurisdiction. Further, the Trainee Appraiser course is not eligible towards the 75 hours of qualifying education required. Please refer to the Supervisory Appraiser / Trainee Appraiser Course Objectives and Outline in this booklet for more information.

LICENSED RESIDENTIAL REAL PROPERTY APPRAISER

Please consult the **CRITERIA APPLICABLE TO ALL APPRAISER CLASSIFICATIONS** for additional requirements.

I. General

- A. The Licensed Residential Real Property Appraiser classification applies to the appraisal of non-complex one-to-four residential units having a transaction value less than \$1,000,000, and complex one-to-four residential units having a transaction value less than \$400,000.
- B. Complex one-to-four unit residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical.
- C. For non-federally related transaction appraisals, transaction value shall mean market value.
 1. The classification includes the appraisal of vacant or unimproved land that is utilized for one-to-four residential units, or for which the highest and best use is for one-to-four residential units.
 2. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.
- D. All Licensed Residential Real Property Appraisers must comply with the COMPETENCY RULE of USPAP.

II. Examination

- A. The AQB-approved Licensed Residential Real Property Appraiser examination must be successfully completed. The only alternative to successful completion of the Licensed Residential examination is the successful completion of the Certified Residential or Certified General examination.
- B. The prerequisites for taking the AQB-approved examination are completion of:
 1. One hundred fifty (150) creditable class hours as specified in the *Required Core Curriculum*; and
 2. One thousand (1,000) hours of qualifying experience in no fewer than six (6) months.

III. Qualifying Education

- A. The Licensed Residential Real Property Appraiser classification requires completion of one hundred fifty (150) creditable class hours as specified in the *Required Core Curriculum*. As part of the 150 required hours, the applicant shall successfully complete the *15-Hour National USPAP Course*, or its AQB-approved equivalent, and successfully pass the examination. There is no alternative to successful completion of the USPAP Course and examination.
- B. Appraisers holding a valid **Trainee Appraiser** credential may satisfy the educational requirements for the Licensed Residential Real Property Appraiser credential by successfully completing the following additional educational hours:

1. Residential Market Analysis and Highest and Best Use	15 Hours
2. Residential Appraiser Site Valuation and Cost Approach	15 Hours
3. Residential Sales Comparison and Income Approaches	30 Hours
4. Residential Report Writing and Case Studies	15 Hours
	TOTAL 75 Hours
- C. Appraisers holding a valid **Certified Residential Real Property Appraiser** credential satisfy the educational requirements for the Licensed Residential Real Property Appraiser credential.
- D. Appraisers holding a valid **Certified General Real Property Appraiser** credential satisfy the educational requirements for the Licensed Residential Real Property Appraiser credential.

IV. Experience:

One thousand (1,000) hours of experience are required to be obtained in no fewer than six (6) months.

CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER

Please consult the **CRITERIA APPLICABLE TO ALL APPRAISER CLASSIFICATIONS** for additional requirements.

I. General

- A. The Certified Residential Real Property Appraiser classification qualifies the appraiser to appraise one-to-four residential units without regard to value or complexity.
 1. The classification includes the appraisal of vacant or unimproved land that is utilized for one-to-four residential units purposes or for which the highest and best use is for one-to-four residential units.
 2. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.
- B. All Certified Residential appraisers must comply with the COMPETENCY RULE of USPAP.

II. Examination

- A. The AQB-approved Certified Residential Real Property Appraiser examination must be successfully completed. The only alternative to successful completion of the Certified Residential examination is the successful completion of the Certified General examination.
- B. The prerequisites for taking the AQB-approved examination are completion of:
 1. Two hundred (200) creditable class hours as specified in the *Required Core Curriculum*;
 2. Completion of the requirements specified in Section III.B. or III.C., "Qualifying Education"; and
 3. One thousand five hundred (1,500) hours of qualifying experience obtained in no fewer than twelve (12) months.

III. Qualifying Education

- A. All college-level education must be obtained from a degree-granting institution by the Commission on Colleges, a national or regional accreditation association, or by an accrediting agency that is recognized by the US Secretary of Education.

Applicants with a college degree from a foreign country may have their education evaluated for "equivalency" by one of the following:

- An accredited, degree-granting domestic college or university;
 - A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or
 - A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.
- B. Applicants for the Certified Residential credential must satisfy at least one of the following five options (III.B.1., III.B.2., III.B.3., III.B.4., or III.B.5.):
 1. Possession of a Bachelor's Degree in any field of study;
 2. Possession of an Associate's Degree in a field of study related to:
 - a. Business Administration;
 - b. Accounting;
 - c. Finance;
 - d. Economics; or
 - e. Real Estate

3. Successful completion of 30 semester hours of college-level courses that cover each of the following specific topic areas and hours:
 - a. English Composition (3 semester hours);
 - b. Microeconomics (3 semester hours);
 - c. Macroeconomics (3 semester hours);
 - d. Finance (3 semester hours);
 - e. Algebra, Geometry, or higher mathematics (3 semester hours);
 - f. Statistics (3 semester hours);
 - g. Computer Science (3 semester hours);
 - h. Business or Real Estate Law (3 semester hours); and
 - i. Two elective courses in any of the topics listed above or in accounting, geography, agricultural economics, business management, or real estate (3 semester hours each).
 4. Successful completion of at least 30 semester hours of College Level Examination Program® (CLEP®) examinations from each of the following subject matter areas:
 - a. College Algebra (3 semester hours);
 - b. College Composition (6 semester hours);
 - c. College Composition Modular (3 semester hours);
 - d. College Mathematics (6 semester hours);
 - e. Principles of Macroeconomics (3 semester hours);
 - f. Principles of Microeconomics (3 semester hours);
 - g. Introductory Business Law (3 semester hours); and
 - h. Information Systems (3 semester hours).
 5. Any combination of III.B.3 and III.B.4 above that ensures coverage of all topics and hours identified in III.B.3.
- C. As an alternative to the requirements in Section III.B. above, individuals who have held a Licensed Residential credential for a minimum of five (5) years may qualify for a Certified Residential credential by satisfying all of the following:
1. No record of any adverse, final, and non-appealable disciplinary action affecting the Licensed Residential appraiser’s legal eligibility to engage in appraisal practice within the five (5) years immediately preceding the date of application for a Certified Residential credential;
 2. Successful completion of the additional required qualifying education as specified in Section III.F. below;
 3. Successful completion of the required experience as specified in Section IV below; and
 4. Successful completion of the Certified Residential Real Property Appraiser examination as specified in Section II above.
- D. The Certified Residential Real Property Appraiser classification requires completion of two hundred (200) creditable class hours as specified in the *Required Core Curriculum*. As part of the 200 required hours, the applicant shall successfully complete the *15-Hour National USPAP Course*, or its AQB-approved equivalent, and the examination. There is no alternative to successful completion of the USPAP Course and examination.
- E. Appraisers holding a valid **Trainee Appraiser** credential may satisfy the educational requirements for the Certified Residential Real Property Appraiser credential by successfully completing the following additional educational hours:
- | | |
|---|------------------|
| 1. Residential Market Analysis and Highest and Best Use | 15 Hours |
| 2. Residential Appraiser Site Valuation and Cost Approach | 15 Hours |
| 3. Residential Sales Comparison and Income Approaches | 30 Hours |
| 4. Residential Report Writing and Case Studies | 15 Hours |
| 5. Statistics, Modeling and Finance | 15 Hours |
| 6. Advanced Residential Applications and Case Studies | 15 Hours |
| 7. Appraisal Subject Matter Electives | 20 Hours |
| TOTAL | 125 Hours |
- F. Appraisers holding a valid **Licensed Residential Real Property Appraiser** credential may satisfy the educational requirements for the Certified Residential Real Property Appraiser credential by successfully completing the following additional educational hours:
- | | |
|---|-----------------|
| 1. Statistics, Modeling and Finance | 15 Hours |
| 2. Advanced Residential Applications and Case Studies | 15 Hours |
| 3. Appraisal Subject Matter Electives | 20 Hours |
| TOTAL | 50 Hours |

- G. Appraisers holding a valid **Trainee Appraiser** credential wishing to change to the Certified Residential Real Property Appraiser classification must also satisfy the college-level education requirement as specified in III.B.
- H. Appraisers holding a valid **Licensed Residential Real Property Appraiser** credential wishing to change to the Certified Residential Real Property Appraiser classification who do not meet the requirements outlined in Section III.C. must also satisfy the college-level education requirements as specified in Section III.B.
- I. Appraisers holding a valid **Licensed Residential Real Property Appraiser** credential wishing to change to the Certified Residential Real Property Appraiser classification who meet the requirements outlined in Section III.C. do not need to satisfy college-level education requirements as specified in Section III.B.
- J. Appraisers holding a valid **Certified General Real Property Appraiser** credential satisfy the educational requirements for the Certified Residential Real Property Appraiser credential.

IV. Experience:

One thousand five hundred (1,500) hours of experience are required to be obtained during no fewer than twelve (12) months. While the hours may be cumulative, the required number of months must accrue before an individual can be certified.

CERTIFIED GENERAL REAL PROPERTY APPRAISER

Please consult the **CRITERIA APPLICABLE TO ALL APPRAISER CLASSIFICATIONS** for additional requirements.

I. General

- A. The Certified General Real Property Appraiser classification qualifies the appraiser to appraise all types of real property.
- B. All Certified General appraisers must comply with the COMPETENCY RULE of USPAP.

II. Examination

- A. The AQB-approved Certified General Real Property Appraiser examination must be successfully completed. There is no alternative to successful completion of the exam.
- B. The prerequisites for taking the AQB-approved examination are completion of:
 1. Three hundred (300) creditable class hours as specified in the *Required Core Curriculum*; and
 2. Completion of the college-level education requirements specified in III.A. "Qualifying Education"; and
 3. Three thousand (3,000) hours of qualifying experience obtained in no fewer than eighteen (18) months, where a minimum of one thousand five hundred (1,500) hours must be obtained in non-residential appraisal work.

III. Qualifying Education

- A. Applicants for the Certified General credential must hold a Bachelor's degree or higher from an accredited college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a national or regional accreditation association, or by an accrediting agency that is recognized by the US Secretary of Education. Applicants with a college degree from a foreign country may have their education evaluated for "equivalency" by one of the following:
 - An accredited, degree-granting domestic college or university;
 - A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or
 - A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.
- B. The Certified General Real Property Appraiser classification requires completion of three hundred (300) creditable class hours as specified in the *Required Core Curriculum*. As part of the 300 required hours, the applicant shall complete the *15-Hour National USPAP Course*, or its AQB-approved equivalent, and the examination. There is no alternative to successful completion of the USPAP Course and examination.
- C. Applicants must demonstrate that their education includes the core courses listed in these *Criteria*, with particular emphasis on non-residential properties. Residential is defined as "composed of one-to-four residential units."

- D. Appraisers holding a valid **Trainee Appraiser** credential may satisfy the educational requirements for the Certified General Real Property Appraiser credential by successfully completing the following additional educational hours:

1. General Appraiser Market Analysis and Highest and Best Use	30 Hours
2. Statistics, Modeling and Finance	15 Hours
3. General Appraiser Sales Comparison Approach	30 Hours
4. General Appraiser Site Valuation and Cost Approach	30 Hours
5. General Appraiser Income Approach	60 Hours
6. General Appraiser Report Writing and Case Studies	30 Hours
7. Appraisal Subject Matter Electives	30 Hours
TOTAL	225 Hours

- E. Appraisers holding a valid **Licensed Residential Real Property Appraiser** credential may satisfy the educational requirements for the Certified General Real Property Appraiser credential by successfully completing the following additional educational hours:

1. General Appraiser Market Analysis and Highest and Best Use	15 Hours
2. Statistics, Modeling and Finance	15 Hours
3. General Appraiser Sales Comparison Approach	15 Hours
4. General Appraiser Site Valuation and Cost Approach	15 Hours
5. General Appraiser Income Approach	45 Hours
6. General Appraiser Report Writing and Case Studies	15 Hours
7. Appraisal Subject Matter Electives	30 Hours
TOTAL	150 Hours

- F. Appraisers holding a valid **Certified Residential Real Property Appraiser** credential may satisfy the educational requirements for the Certified General Real Property Appraiser credential by successfully completing the following additional educational hours:

1. General Appraiser Market Analysis and Highest and Best Use	15 Hours
2. General Appraiser Sales Comparison Approach	15 Hours
3. General Appraiser Site Valuation and Cost Approach	15 Hours
4. General Appraiser Income Approach	45 Hours
5. General Appraiser Report Writing and Case Studies	10 Hours
TOTAL	100 Hours

- G. **Trainee Appraisers, Licensed Residential Real Property Appraisers, and Certified Residential Real Property Appraisers** wishing to change to the Certified General Real Property Appraiser classification must also satisfy the requirements in III.A. and III.C.

IV. Experience

Three thousand (3,000) hours of experience are required to be obtained during no fewer than eighteen (18) months. One thousand five hundred (1,500) hours must be in non-residential appraisal work. While the hours may be cumulative, the required number of months must accrue before an individual can be certified.

REQUIRED CORE CURRICULUM

TRAINEE APPRAISER	
BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
15-HOUR NATIONAL USPAP COURSE (OR ITS EQUIVALENT)	15 HOURS
TOTAL	75 HOURS

LICENSED RESIDENTIAL	
BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
15-HOUR NATIONAL USPAP COURSE (OR ITS EQUIVALENT)	15 HOURS
RESIDENTIAL MARKET ANALYSIS AND HIGHEST AND BEST USE	15 HOURS
RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH	15 HOURS
RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES	30 HOURS
RESIDENTIAL REPORT WRITING AND CASE STUDIES	15 HOURS
TOTAL	150 HOURS

CERTIFIED RESIDENTIAL	
BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
15-HOUR NATIONAL USPAP COURSE (OR ITS EQUIVALENT)	15 HOURS
RESIDENTIAL APPRAISER MARKET ANALYSIS AND HIGHEST AND BEST USE	15 HOURS
RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH	15 HOURS
RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES	30 HOURS
RESIDENTIAL REPORT WRITING AND CASE STUDIES	15 HOURS
STATISTICS, MODELING AND FINANCE	15 HOURS
ADVANCED RESIDENTIAL APPLICATIONS AND CASE STUDIES	15 HOURS
APPRAISAL SUBJECT MATTER ELECTIVES (May include hours over minimum shown above in other modules)	20 HOURS
TOTAL	200 HOURS

CERTIFIED GENERAL	
BASIC APPRAISAL PRINCIPLES	30 HOURS
BASIC APPRAISAL PROCEDURES	30 HOURS
<i>15-HOUR NATIONAL USPAP COURSE (OR ITS EQUIVALENT)</i>	15 HOURS
GENERAL APPRAISER MARKET ANALYSIS AND HIGHEST AND BEST USE	30 HOURS
STATISTICS, MODELING AND FINANCE	15 HOURS
GENERAL APPRAISER SITE VALUATION AND COST APPROACH	30 HOURS
GENERAL APPRAISER SALES COMPARISON APPROACH	30 HOURS
GENERAL APPRAISER INCOME APPROACH	60 HOURS
GENERAL APPRAISER REPORT WRITING AND CASE STUDIES	30 HOURS
APPRAISAL SUBJECT MATTER ELECTIVES (May include hours over minimum shown above in other modules)	30 HOURS
TOTAL	300 HOURS

SUPERVISORY APPRAISER / TRAINEE APPRAISER COURSE OBJECTIVES AND OUTLINE

COURSE OBJECTIVES

In developing the course, providers must include the following course objectives, which address both the Supervisory Appraiser and Trainee Appraiser.

Supervisory Appraiser Objectives

The course must provide adequate information to ensure the Supervisory Appraiser understands the qualifications and responsibilities of that role. Specifically, the objective of the course shall be that the student understands:

- AQB minimum qualifications for becoming and remaining a Supervisory Appraiser;
- Jurisdictional credentialing requirements for both Supervisory Appraisers and Trainee Appraisers that may exceed those of the *Criteria*;
- Expectations and responsibilities of being a Supervisory Appraiser;
- Responsibilities and requirements of a Supervisory Appraiser in maintaining and signing all appropriate Trainee Appraiser experience logs; and
- Expectations and responsibilities of the Trainee Appraiser.

Trainee Appraiser Objectives

The course must provide adequate information to ensure the Trainee Appraiser understands the qualifications and responsibilities of that role. Specifically, the objective of the course shall be that the student understands:

- AQB minimum qualifications for becoming a credentialed appraiser;
- Jurisdictional credentialing requirements for Trainee Appraisers that may exceed those of the *Criteria*;
- AQB minimum qualifications for becoming and remaining a Supervisory Appraiser, as well as jurisdictional credentialing requirements that may exceed those of the *Criteria*;
- Processes and roles of the entities involved in establishing qualifications for credentialed appraisers;
- Expectations and responsibilities of the Trainee Appraiser;
- Basics of the *Uniform Standards of Professional Appraisal Practice (USPAP)*; and
- Responsibilities and requirements of a Trainee Appraiser's role in maintaining and signing all appropriate Trainee Appraiser experience logs.

COURSE CONTENT OUTLINE

Education developers must include the topics contained in the following outline when creating course content:

I. Table of Contents

II. Course Introduction and Overview

III. Qualification and Credentialing Entities

- A. The Appraisal Foundation
 1. Overview of the creation and role of The Appraisal Foundation
- B. The Appraiser Qualifications Board (AQB)
 1. Overview of the role of the AQB in establishing qualifications for real property appraisers

- C. Individual State or Territory Credentialing Authorities
 - 1. Overview of a jurisdiction's role in issuing appraiser credentials and disciplining appraisers
 - 2. Specific information regarding the regulatory structure of the individual jurisdiction (optional)
- D. Professional Appraiser Organizations
 - 1. Overview of the role of professional appraiser organizations
 - 2. Explain difference between required regulatory state appraiser credentials and "voluntary" professional appraiser organization designations

IV. Qualifications for Appraiser Credentials

- A. AQB Qualifications
 - 1. Overview of the AQB minimum qualifications for real property appraisers, including the education, experience, and examination requirements for the following categories:
 - a. Trainee Appraiser
 - b. Licensed Residential
 - c. Certified Residential
 - d. Certified General

Comment: Course developers shall include a summary matrix outlining the minimum education, experience, and examination requirements necessary for each of the credentials.

- 2. Overview of Supervisory Appraiser Qualifications
 - a. AQB minimum qualifications
 - b. Discussion noting individual credentialing jurisdictions could have qualifications that may exceed AQB minimum qualifications
- B. Individual Jurisdiction Qualifications
 - 1. Overview explaining how AQB sets minimum qualifications, but states may have qualifications that exceed AQB *Criteria*
 - 2. Outline and explain the specific steps/requirements to becoming licensed or certified in the particular jurisdiction in which the course is being provided

V. Overview of USPAP

- A. Provide brief overview of sections of USPAP relevant to Trainee Appraisers including overviews of:
 - 1. ETHICS RULE
 - 2. COMPETENCY RULE
 - 3. SCOPE OF WORK RULE
 - 4. RECORD KEEPING RULE
 - 5. STANDARD 1 (Development) and STANDARD 2 (Reporting)

Comment: This section is not intended to be a substitute for the *15-Hour National USPAP Course* (or its equivalent).

VI. Overview of Supervisory Appraiser Expectations and Responsibilities

- A. The course material must include a presentation of the requirements, expectations, and responsibilities of the Supervisory Appraiser. At a minimum, the course materials must include the expectations and responsibilities of the Supervisory Appraiser to:
 - 1. Provide the Trainee Appraiser with a basic understanding of USPAP requirements
 - 2. Understand the AQB minimum requirements of both the Supervisory Appraiser and Trainee Appraiser, as well as the requirements of the credentialing jurisdiction that may exceed those of the *Criteria*
 - 3. Provide proper guidance to the Trainee Appraiser when he or she selects a specific credentialing path (i.e., Licensed Residential, Certified Residential, or Certified General)
 - 4. Monitor the Trainee Appraiser's progress in satisfying both the education and experience requirements necessary to achieve his or her selected credentialing path
 - 5. Verify that the Supervisory Appraiser and Trainee Appraiser are properly documenting all appropriate experience logs

6. Accompany the Trainee Appraiser on all inspections until the Trainee Appraiser is competent to conduct inspections independently and has met all specific requirements pertaining to property inspection established by the credentialing jurisdiction
7. Monitor and provide assignments and duties that ensure the Trainee Appraiser is developing an understanding and progression of knowledge and experience of all applicable valuation methodologies and approaches to value
8. Verify that the Trainee Appraiser is properly identified and acknowledged in the appraisal report in compliance with USPAP requirements
9. Immediately notify the Trainee Appraiser if the Supervisory Appraiser is no longer qualified to supervise and/or sign the Trainee Appraiser's experience log

VII. Overview of Trainee Appraiser Expectations and Responsibilities

- A. The course material must include a presentation of the requirements, expectations, and responsibilities of the Trainee Appraiser. At a minimum, the course materials must include the expectations and responsibilities of the Trainee Appraiser to understand:
 1. The AQB minimum requirements to become a Trainee Appraiser, as well as the requirements of the credentialing jurisdiction that may exceed those of the *Criteria*
 2. The importance of selecting an appropriate Supervisory Appraiser. Points covered shall include:
 - a. The Supervisory Appraiser-Trainee Appraiser relationship is a long-term commitment by both parties
 - b. The Trainee Appraiser is inherently connected to the "good standing" of the Supervisory Appraiser
 - c. The importance of selecting a Supervisory Appraiser with the experience and competency that best matches the Trainee Appraiser's selected credentialing path
 - d. Options for the Trainee Appraiser if a Supervisory Appraiser is no longer qualified to serve as a Supervisory Appraiser
 3. How to determine if an appraiser is qualified and in good standing to be a Supervisory Appraiser by searching the Appraisal Subcommittee (ASC) National Registry and/or jurisdictional websites
 4. It is the Supervisory Appraiser's responsibility to monitor the progression of the Trainee Appraiser's education and experience necessary to achieve the Trainee Appraiser's selected credentialing path
 5. It is the Supervisory Appraiser's responsibility to provide assignments and duties that ensure the Trainee Appraiser is developing an understanding and progression of knowledge and experience of all applicable valuation methodologies and approaches to value
 6. The responsibilities of both the Trainee Appraiser and the Supervisory Appraiser in properly documenting all appropriate Trainee Appraiser's experience logs
 7. The Supervisory Appraiser must accompany the Trainee Appraiser on all inspections until he or she is competent to conduct inspections independently, and has met all requirements pertaining to property inspection established by the credentialing jurisdiction

VIII. Overview of Jurisdictional Requirements for Supervisory Appraiser and Trainee Appraiser Requirements

- A. Provide summary of jurisdictional requirements that may exceed those of the AQB *Criteria*
- B. Course developers may elect to present jurisdictional requirements as a separate add-on module, or incorporate differences between AQB minimum and jurisdictional requirements in each appropriate section of the outline

IX. Summary/Quiz (optional)

X. Definitions

- A. Provide glossary of definitions utilized throughout the course

PRACTICAL APPLICATIONS OF REAL ESTATE APPRAISAL (PAREA)

The goal of the following is to outline necessary Content Criteria that must be included in the development of exercises, examples, simulations, case studies, and applications as are appropriate to recreate the practical experience expected to be gained by an appraiser seeking a license credential. At least 3 USPAP compliant appraisal reports will be developed in the PAREA program for each licensing category. At a minimum, development and reporting of appraisals for single unit residences, 2-4 unit, and condominium units are essential.

MINIMUM CONTENT REQUIREMENTS – LICENSED RESIDENTIAL CLASSIFICATION

I. Introduction

A. General Considerations and Responsibilities

1. Discuss respecting the public trust
2. Review and comment on appraiser independence
3. Review and comment on the responsibilities to clients regarding reconsideration of value requests and other communication

B. Appraisal Software and Tools

1. Overview of software options (vendors) and common forms
2. Overview of Common tools: measuring devices, cameras, etc.

II. Problem Identification

A. Understanding Assignment Parameters

1. Perform initial review of order/engagement letter, determine authoritative lines of communication. Provide interactive exercises in extracting key information from engagement letter.

B. Understanding Assignment Elements and Competency Issues

1. Examine appraisal request and other documents provided (e.g. title reports, surveys, purchase contract) to determine key assignment elements (Standards Rule 1-2(a)–Standards Rule 1-2(d), and the SCOPE OF WORK RULE), and/or contractual obligations. Determine relevant appraisal assignment conditions. Understanding common client, intended use, intended users, engagement letter terms, various assignment types, basis for assignment conditions, extraordinary assumptions, and hypothetical conditions (e.g., FHA, VA, USDA, etc.).
2. Provide exercises for defining the problem. The goal is for participant to establish appropriate steps in appraisal process.
3. Exercises should contain overlays introducing key engagement items that could affect scope of work
4. Ensure that exercises demonstrate impact on both assignment conditions and elements.
5. Include exercises where an appraiser can identify during problem definition process the existence of possible extraordinary assumptions and/or hypothetical conditions.
6. Demonstrate how competency issues are identified and will be resolved.

C. Market, Neighborhood, and Subject Property Research

1. Utilize preliminary online/archival research to gain basic market area and subject property information.
2. Develop the general area and neighborhood market analysis.
 - a. Overview of available data sources for market area information.

3. Retrieval/analysis of preliminary information necessary for understanding subject site and improvements.
4. Review of public record information including site and improvement information.
5. Utilization of MLS/online sites as a verification source.
6. Based on information gathered above, develop and explain key relevant property characteristics (Standards Rule 1-2(e)).

D. Obtaining Preliminary Subject Property Information

1. Simulate setting the inspection appointment with related requests/requirements.
2. Determine how you will verify individual providing access.
3. Review of inspections and reports provided by others and discuss their application and disclosure in the assignment.

III. Review Sections I and II with Mentor

- A. Ensure the problem identification process was performed properly leading to an appropriate scope of work.**
- B. Review research performed to evaluate suitability and that the quantity of information will be satisfactory for later development and analysis.**

IV. Property Identification and Inspection along with Initial Site Identification

- A. Research available information sources including public records.**
- B. Zoning, general plan information**
 1. Identify where to locate all sources of information
 2. Verification of revisions to zoning/general plan
 3. Variances, use restrictions
- C. Environmental issues, flood zone/earthquake information. Identify and explain unusual issues**
 1. Location of relevant research information
 2. Communicate any unusual findings to the client to confirm whether assignment is to be completed

V. Verification of Neighborhood and Market Area

- A. Conduct virtual inspection/review of subject's market area**
- B. Explain various influences**
- C. Identify and explain trends/characteristics in the defined neighborhood and market area**

VI. Subject Site Inspection

- A. Verify similarity to plat, observation of site utility, its surrounding influences, and possible conditions that could impact value or marketability**
- B. Analysis of site improvements and useable site area.**
 1. Determine and explain how useable site area relates to surrounding properties
- C. Identify and discuss various site amenities. Include exercises that include various levels of impact on value**

VII. Subject Property Improvements Inspection

- A. Overview**
 1. Types/quality of construction
 2. Floor plan issues, determination of room counts
 3. Observable condition factors and description of upgrades
 4. Recognition of potential/existing adverse influences
- B. Conduct a virtual physical inspection to determine relevant physical characteristics**
- C. Provide a thorough description of improvements**

VIII. Measuring the Subject Property Improvements

- A. Exercises to include methods and ultimately determination of:**
 1. Basements

2. Stairways & vaulted ceiling areas
3. Below grade living area (split level)
4. Accessory dwelling units, outbuildings, etc.
5. Awareness of special assignment conditions
6. Common rounding practices

B. Include virtual exercises in measuring subject properties

C. Other sources for obtaining GLA

IX. Sketch Completion

A. Include sketch completion exercises

B. Exercises must include final GLA determination (what areas should be extracted from GLA)

X. Review Sections IV thru IX with Mentor

A. Ensure all elements of inspection process have been performed properly, including neighborhood, site, and improvements

XI. Market Analysis/ Highest and Best Use

A. Highest and Best Use

1. Overview of pertinent data, including current/proposed/potential alternative use and communication of highest and best use

B. Performing Neighborhood and Market Research

1. Identify the market area boundaries, physical characteristics, and specific property location relevant to the analysis of the subject property.
2. Identify the trends and characteristics in the defined neighborhood and market area

XII. Review Section XI with Mentor

A. Ensure key analytical issues related to market conditions and highest and best use are effectively addressed

XIII. Process of Sales Analysis

A. Identify the best sources of sales data for use in case studies including:

1. MLS
2. City/County (public) transfer records
 - a. How to verify
3. Data providers
4. Appraiser office files
 - a. Confidentiality concerns
5. Real estate agents/brokers
 - a. How to verify

B. Select the same or similar property types, uses, and characteristics.

1. Identify elements of comparison
2. Develop exercises for various property types

C. Identify all relevant current listings, expired listings, withdrawn listings, offers (if available), FSBO, closed sales, and pending sales

XIV. Review Section XIII with Mentor

A. Ensure all necessary steps in highest and best use analysis and market analysis were performed properly. Review data source material to assure sufficient information has been identified for further application.

XV. Valuation Approaches and Techniques

A. Consider each approach to value and explain the appropriateness based on the intended use of the assignment. Select the data considered most meaningful and relevant.

B. Sales Comparison Approach

1. Analyze quality and quantity of data

- a. Identify relevant units of comparison
- b. Data and information collected must be analyzed for comparability and consistency
2. Select the sales that are considered the most appropriate for subject property comparability (demonstrate the process)
 - a. Identify and apply appropriate adjustments to comparable transactions based on differences to the subject property. Demonstrate applicable tools and methods, including:
 1. Paired sales analysis
 2. Statistical and other graphic analysis
 3. Trend analysis
 4. Qualitative differences, including:
 - a. Relative comparison analysis
 - b. Ranking analysis
 5. Discuss and reconcile key elements developed in the sales comparison approach

C. Cost Approach

1. Develop site value of the subject as vacant using recognized methods or techniques
 - a. Include contributory value of site improvement
2. Discuss use of replacement or reproduction cost
 - a. Develop supportive data for the cost calculations
 - b. Calculate cost new for the improvements
 - c. Calculate depreciation (demonstrate and apply types, consider market trends)
 - d. Discuss and reconcile key elements developed in the cost approach

D. Income Approach

1. Collection and verification of pertinent rental data (actual vs. contract)
2. Determine appropriate GRM (Gross Rent Multiplier)
3. Discuss and reconcile key elements developed in the income approach

XVI. Review Section XV with Mentor

- A. Ensure all approaches to value were adequately considered and completed in supportable fashion (including cost and/or income approaches if performed)**

XVII. Final Reconciliation

- A. Analyze and discuss accuracy and sufficiency of data**
- B. Analyze and discuss strengths and weaknesses of each approach to value and their applicability to the subject property**
- C. Analyze and discuss consistency of data and development**
- D. Analyze and discuss the quality and quantity of data**
- E. Review calculations**
- F. Develop the final opinion of value along with the rationale for your conclusions**

XVIII. Review Section XVII with Mentor

- A. Ensure final reconciliation was performed properly and determine appropriate reporting**

XIX. Appraisal Report Development/Delivery

A. Report Development

1. Standards Rule 2-1 minimum standard (not misleading, sufficient, assumptions, etc.)
 - a. Ability to describe the subject property and comparable properties used in the analysis (ensure compliance with STANDARD 2)
 1. Technical terms
 2. Common industry phrases and descriptors
 3. Fair lending do's and don'ts
 4. Identify relevant information using industry typical approaches and technologies
 - b. Ability to describe a market area and a neighborhood (same subset as above)

- c. Report format
 - 1. Comply with all applicable assignment elements and conditions
 - 2. Awareness and compliance with state regulatory requirements
 - 3. Describe scope of work
 - 4. Ensure applicable appropriate addenda, exhibits, photos, etc. are included
 - 5. Understand adequacy/relevance/integrity of photos, maps, and exhibits – how/where to upload in a report
- d. Certification
 - 1. Ensure familiarity with pre-printed content and applicability.
 - 2. Develop exercises on completion of workfile documents
 - 3. Demonstrate an ability to store and compile documents

XX. Review Section XIX with Mentor

- A. Ensure that the key components of an appraisal report and report format are appropriate for assignment(s)

XXI. Communication of Assignment Results

- A. Adequacy and relevance of information
 - 1. USPAP compliance
 - 2. Assignment conditions
- B. Understand common Client-specific requirements – additional comparable sales, inclusion of active listings in the report, supplemental exhibits, etc.
 - 1. Demonstrate the ability to meet client expectations conveyed through the engagement letter or other instruction methods
 - 2. Adequate support for analysis
- C. Explain and support rationale for excluding any of the traditional approaches
 - 1. Explain and support reconciliation
 - 2. Explain all assumptions
- D. Explain and support all extraordinary assumptions and hypothetical conditions (state their use may have effect on assignment results)

XXII. Review Section XXI with Mentor

- A. Ensure understanding of effective appraisal report presentation and required content
- B. Ensure compliance with Standards Rule 2-2

MINIMUM CONTENT REQUIREMENTS – CERTIFIED RESIDENTIAL CLASSIFICATION

I. Problem Identification

- A. Relevant Scope of Work and Competency Issues Involved
 - 1. Develop exercises on how competency issues will be resolved.
 - 2. Conduct a preliminary analysis to ensure an appropriate Scope of Work

II. Review Section I with Mentor

- A. Ensure understanding of how issues uncovered during property identification process relate to complexity. Also, focus on complex ownership issues

III. Positive or Negative Locational Influences

- A. Recognize Population/Employment Trends
- B. Determine and discuss relationships between employment, population, and residential units (Single Unit Residential vs. 2-4 Unit Residential) over time

IV. Residential Market Analysis/Highest and Best Use

- A. Market Analysis Issues Related to Highest and Best Use for Complex Properties

- B. **Special Assessments**
- V. **Review Sections III and IV with Mentor**
- A. Ensure key analytical issues related to market conditions and highest and best use are effectively addressed.
- VI. **Physical Characteristics of Complex Properties – identify and discuss**
- A. **Unique Design Features**
 - B. **High Quality/Amenity Properties**
 - C. **Over-improvements**
 - D. **Physical Deficiencies of Improvements**
 - E. **Functional Inadequate and Super Adequate Impact**
- VII. **Vacant Sites (Including View Amenities, Surplus Land)**
- A. Develop exercises that contain issues covered under Site and Cost Approaches
- VIII. **Use of Key Statistical Concepts**
- A. Develop appropriate statistical tools to be used in development of opinion of value
 - B. Explain and support their application
- IX. **Key Market Driving Influences**
- A. Determine most appropriate units of comparison (market drivers)
 - B. Identify market preferences for characteristics and amenities (e.g., parking, # beds, # baths, GLA)
- X. **Review Sections VI thru IX with Mentor**
- A. Ensure key analytical issues related to market conditions and highest and best use are effectively addressed
 - B. Confirm appropriate items have been identified and analyzed for proper application in determination of opinion of value
- XI. **Site Valuation and Cost Approaches**
- A. **Site Valuation**
 1. Extract comparable land/site sales data that will adequately support adjustments for contributing value of unique attributes associated with complex vacant sites (view, entitlements, amenities, surplus/excess land)
 - B. **Develop a supportable Land/Site Valuation - using the following methods:**
 1. Allocation
 2. Market extraction
 3. Ground rent capitalization
 4. Land residual method; and
 5. Sales comparison
 - C. **Construction Costs**
 1. Exercises related to high amenity structures
 2. Discuss local cost influences
 - D. **Functional Obsolescence**
 1. Distinguish between curable and incurable forms
 2. Analyze and support conclusions on obsolescence, including lack thereof, associated with complex properties
 - E. **External Obsolescence**
 1. Analyze and support conclusions on obsolescence, including lack thereof, associated with complex properties

XII. Review Section XI with Mentor

- A. **Ensure the Cost Approach has been performed properly.**

XIII. Sales Comparison Approach**A. Sales Concessions**

1. Is the subject property subject to sales concessions?
2. Identify and discuss application (or not) of any sales concessions in comparable data based on market norms
3. Cash equivalency related to financing terms

B. Identifying and Applying Atypical Adjustments – develop support related to the following:

1. High amenity custom quality adjustments
2. Site adjustments
3. Adjustment support/matched pairs, statistical methods
4. Adjustment support for unique one-off property sales including those with Accessory Dwelling Units

XIV. Review Section XIII with Mentor

- A. **Ensure the sales comparison approach has been performed properly.**

XV. Income Approach**A. 1-4 Unit Appraisals**

1. Perform collection of comparable rent data
2. Complex rental adjustments
3. Understand and apply impact of complex amenities
4. Factor for Expense allocations between comparable transactions

B. Unique 2-4 unit assignments – discuss the following:

1. Location premiums within PUD/condo
2. Impact of rent control or subsidies
3. Student housing
4. Seasonal and short-term rentals

C. GRM analysis

1. Non-market rent impact on GRM
2. Perform reconciliation of GRM indicators

XVI. Review Section XV with Mentor

- A. **Review the Income approach to value and ensure proper analysis and support for conclusions**

XVII. Writing and Reasoning Skills**A. Data Presentation**

1. Develop presentation of data in tables, charts, and graphs as appropriate
2. Express succinct narrative using active voice, direct statements, shorter words, shorter paragraphs and placing the bottom-line up front
3. Underscore proper and understandable use of English
 - a. Have another proofread whenever possible

B. Discussion of Approaches to Value

1. Adjust depth of discussion to the intended user(s)

C. Support for Conclusions

1. Clearly state conclusions throughout the report. Each conclusion requires credible support and logical reconciliation

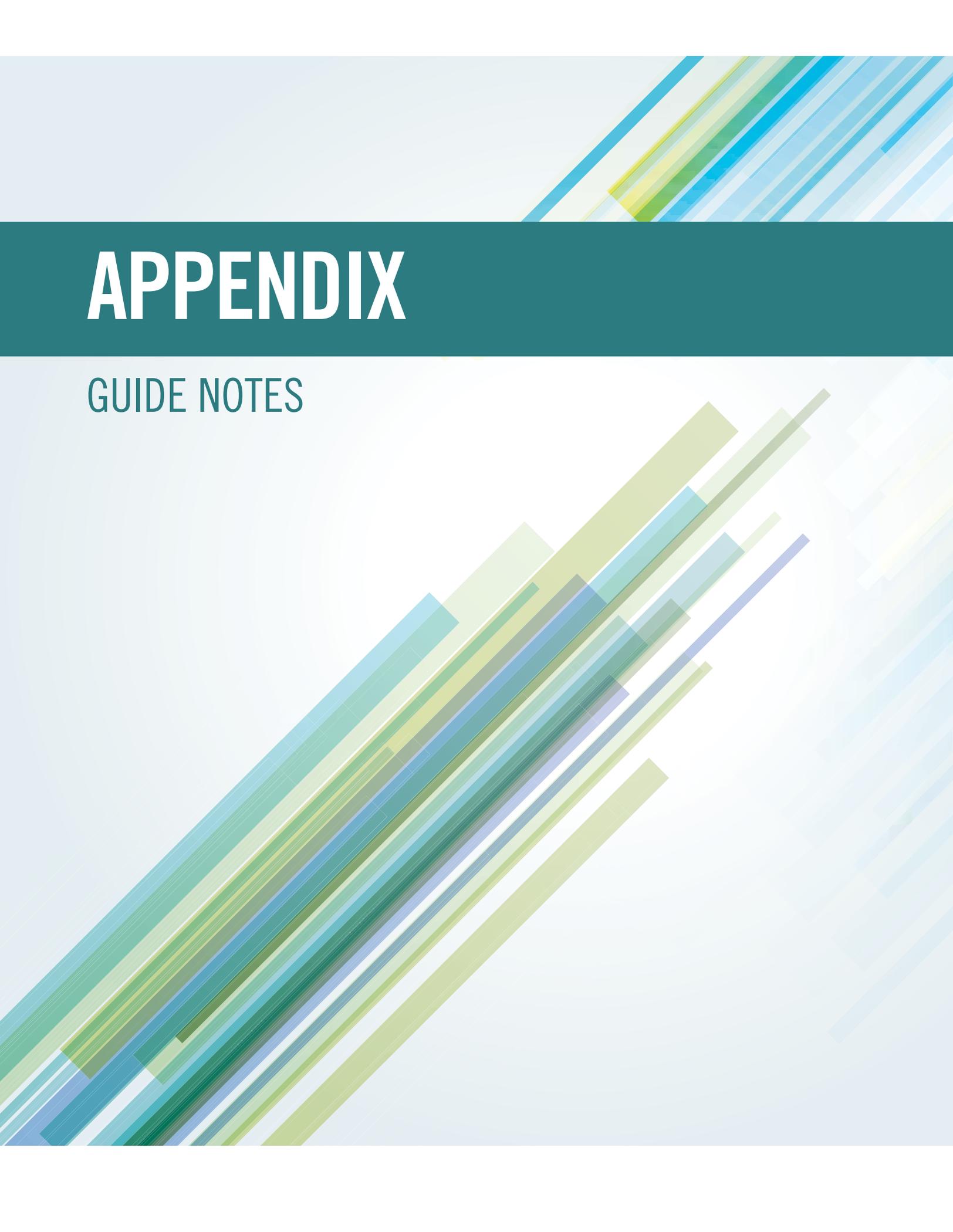
D. Summary of Data and Reconciliation of Value Approaches

1. Summarize the quantity, quality, reliability, and relevance of data available for application in each approach performed. The reconciliation and final value opinion must be consistent with the conclusions of this summary regarding the most germane approach to value

XVIII. Review Section XVII with Mentor

- A. **Ensure understanding of effective appraisal report presentation and required content**

- B. **Ensure compliance with Standards Rule 2-2**



APPENDIX

GUIDE NOTES

GUIDE NOTES

AQB GUIDE NOTE 1 (GN-1) AQB GUIDANCE FOR REQUIRED CORE CURRICULUM CONTENT

Guide Note 1 (GN-1) contains guidance for curriculum content with subtopics listed under each education module (I through XIV) listed. The subtopics in Guide Note 1 are used in developing examination content outlines for each respective credential level and may also be amended from time-to-time to reflect changes in technology or in the Body of Knowledge. The hours shown for each educational module are the minimums required; students may complete more than the minimum required for each module.

Candidates for a real property appraiser credential should carefully review the educational modules below, keeping in mind that some modules only apply to certain classifications. For example, education module IX (*Advanced Residential Applications and Case Studies*) is only required for the Certified Residential classification. Also, education module XIII (*General Appraiser Income Approach*) is required for the Certified General classification but no others. As a result, candidates should structure their education program giving careful consideration to the credential being sought.

I. BASIC APPRAISAL PRINCIPLES (required for the Trainee Appraiser, Licensed Residential, Certified Residential, and Certified General classifications) 30 HOURS

- A. Real Property Concepts and Characteristics
 - 1. Basic Real Property Concepts
 - 2. Real Property Characteristics
 - 3. Legal Description
- B. Legal Considerations
 - 1. Forms of Ownership
 - 2. Public and Private Controls
 - 3. Real Estate Contracts
 - 4. Leases
- C. Influences on Real Estate Values
 - 1. Governmental
 - 2. Economic
 - 3. Social
 - 4. Environmental, Geographic, and Physical
- D. Types of Value
 - 1. Market Value
 - 2. Other Value Types
- E. Economic Principles
 - 1. Classic Economic Principles
 - 2. Application and Illustrations of the Economic Principles
- F. Overview of Real Estate Markets and Analysis
 - 1. Market Fundamentals, Characteristics, and Definitions
 - 2. Supply Analysis
 - 3. Demand Analysis
 - 4. Use of Market Analysis
- G. Ethics and How They Apply in Appraisal Theory and Practice
- H. Valuation Bias, Fair Housing, and/or Equal Opportunity

II. BASIC APPRAISAL PROCEDURES (required for the Trainee Appraiser, Licensed Residential, Certified Residential, and Certified General classifications) 30 HOURS

- A. Overview of Approaches to Value

- B. Valuation Procedures
 1. Defining the Problem
 2. Collecting and Selecting Data
 3. Analyzing
 4. Reconciling and Final Value Opinion
 5. Communicating the Appraisal
 - C. Property Description
 1. Geographic Characteristics of the Land/Site
 2. Geologic Characteristics of the Land/Site
 3. Location and Neighborhood Characteristics
 4. Land/Site Considerations for Highest and Best Use
 5. Improvements - Architectural Styles and Types of Construction
 6. Special Energy-Efficient Characteristics of the Improvements
 - D. Residential or General Applications
- III. 15-HOUR NATIONAL USPAP COURSE OR ITS EQUIVALENT (required for the Trainee Appraiser, Licensed Residential, Certified Residential, and Certified General classifications)**
15 HOURS
- IV. RESIDENTIAL MARKET ANALYSIS AND HIGHEST AND BEST USE (required for the Licensed Residential and Certified Residential classifications)**
15 HOURS
- A. Residential Markets and Analysis
 1. Market Fundamentals, Characteristics, and Definitions
 2. Supply Analysis
 3. Demand Analysis
 4. Use of Market Analysis
 - B. Highest and Best Use
 1. Test Constraints
 2. Application of Highest and Best Use
 3. Special Considerations
 4. Market Analysis
 5. Case Studies
- V. RESIDENTIAL APPRAISER SITE VALUATION AND COST APPROACH (required for the Licensed Residential and Certified Residential classifications)**
15 HOURS
- A. Site Valuation
 1. Methods
 2. Case Studies
 - B. Cost Approach
 1. Concepts and Definitions
 2. Replacement/Reproduction Cost New
 3. Accrued Depreciation
 4. Methods of Estimating Accrued Depreciation
 5. Case Studies
- VI. RESIDENTIAL SALES COMPARISON AND INCOME APPROACHES (required for the Licensed Residential and Certified Residential classifications)**
30 HOURS
- A. Valuation Principles & Procedures - Sales Comparison Approach
 - B. Valuation Principles & Procedures - Income Approach
 - C. Finance and Cash Equivalency
 1. Identification of Seller Concessions and Their Impact on Value
 - D. Financial Calculator Introduction
 - E. Identification, Derivation, and Measurement of Adjustments
 - F. Gross Rent Multipliers
 - G. Partial Interests
 - H. Reconciliation
 - I. Case Studies and Applications
- VII. RESIDENTIAL REPORT WRITING AND CASE STUDIES (required for the Licensed Residential and Certified Residential classifications)**
15 HOURS
- A. Writing and Reasoning Skills
 - B. Common Writing Problems
 - C. Form Reports
 - D. Report Options and USPAP Compliance
 - E. Case Studies
- VIII. STATISTICS, MODELING AND FINANCE (required for the Certified Residential and Certified General classifications)**
15 HOURS
- A. Statistics
 - B. Valuation Models (AVM's and Mass Appraisal)
 - C. Real Estate Finance
- IX. ADVANCED RESIDENTIAL APPLICATIONS AND CASE STUDIES (required for the Certified Residential classification)**
15 HOURS
- A. Complex Property, Ownership, and Market Conditions
 - B. Deriving and Supporting Adjustments
 - C. Residential Market Analysis
 - D. Advanced Case Studies
 1. Seller Concessions
 2. Special Energy-Efficient Items (i.e., "Green Buildings")
- X. GENERAL APPRAISER MARKET ANALYSIS AND HIGHEST AND BEST USE (required for the Certified General classification)**
30 HOURS
- A. Real Estate Markets and Analysis
 1. Market Fundamentals, Characteristics, and Definitions

2. Supply Analysis
3. Demand Analysis
4. Use of Market Analysis

- B. Highest and Best Use
 1. Test Constraints
 2. Application of Highest and Best Use
 3. Special Considerations
 4. Market Analysis
 5. Case Studies

XI. GENERAL APPRAISER SALES COMPARISON APPROACH (required for the Certified General classification)

30 HOURS

- A. Value Principles
- B. Procedures
- C. Identification and Measurement of Adjustments
- D. Reconciliation
- E. Case Studies
 1. Seller Concessions
 2. Special Energy-Efficient Items (i.e., “Green Buildings”)

XII. GENERAL APPRAISER SITE VALUATION AND COST APPROACH (required for the Certified General classification)

30 HOURS

- A. Site Valuation
 1. Methods
 2. Case Studies
- B. Cost Approach
 1. Concepts and Definitions
 2. Replacement/Reproduction Cost New
 3. Accrued Depreciation
 4. Methods of Estimating Accrued Depreciation
 5. Case Studies

XIII. GENERAL APPRAISER INCOME APPROACH (required for the Certified General classification)

60 HOURS

- A. Overview
- B. Compound Interest
- C. Lease Analysis
- D. Income Analysis
- E. Vacancy and Collection Loss
- F. Estimating Operating Expenses and Reserves
- G. Reconstructed Income and Expense Statement
- H. Stabilized Net Operating Income Estimate
 - I. Direct Capitalization
 - J. Discounted Cash Flow
 - K. Yield Capitalization
 - L. Partial Interests
- M. Case Studies

XIV. GENERAL APPRAISER REPORT WRITING AND CASE STUDIES (required for the Certified General classification)

30 HOURS

- A. Writing and Reasoning Skills
- B. Common Writing Problems
- C. Report Options and USPAP Compliance
- D. Case Studies

AQB GUIDE NOTE 2 (GN-2)

AQB GUIDANCE FOR CRITERIA IMPLEMENTATION

RETIRED, OCTOBER 2005

AQB GUIDE NOTE 3 (GN-3)

AQB GUIDANCE FOR CRITERIA IMPLEMENTATION

THIS GUIDE NOTE RELATES TO THE SCOPE OF PRACTICE FOR THE LICENSED RESIDENTIAL AND CERTIFIED RESIDENTIAL CLASSIFICATIONS IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA.

With respect to the *Real Property Appraiser Qualification Criteria* for the Licensed Residential and Certified Residential classifications:

The scope of practice identified herein represents the consensus of the Appraiser Qualifications Board. The Federal Financial Institutions Regulatory Agencies, as well as other agencies and regulatory bodies, permit the Certified Residential (or Licensed) classification to appraise properties other than those identified within these Criteria. Individuals should refer to agency regulations and state law to determine the type of property that may be appraised by the Certified Residential (or Licensed) appraiser.

AQB GUIDE NOTE 4 (GN-4)

AQB GUIDANCE FOR CRITERIA IMPLEMENTATION

THIS GUIDE NOTE RELATES TO PRACTICUM COURSES TO BE USED FOR EXPERIENCE CREDIT, AS SPECIFIED IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA.

Under “Criteria Applicable to All Appraiser Classifications” in the *Real Property Appraiser Qualification Criteria*, Section V Generic Experience *Criteria*, Paragraphs D and E, read as follows:

- D. *There need not be a client in a traditional sense (i.e., a client hiring an appraiser for a business purpose) in order for an appraisal to qualify for experience. Experience gained for work without a traditional client can meet any portion of the total experience requirement.*
- E. *Practicum courses that are approved by the AQB Course Approval Program or state appraiser regulatory agencies can satisfy the non-client experience requirement. **A practicum course must include the generally applicable methods of appraisal practice for the credential category. Content includes, but is not limited to: requiring the student to produce credible appraisals that utilize an actual subject property; performing market research containing sales analysis; and applying and reporting the applicable appraisal approaches in conformity with USPAP. Assignments must require problem solving skills for a variety of property types for the credential category.** Experience credit shall be granted for the actual classroom hours of instruction, and hours of documented research and analysis as awarded from the practicum course approval process. (Bold added for emphasis)*

The bolded language above sets forth the broad requirements for practicum courses. However, more detailed guidance is needed for developers of such courses, as well as state appraiser regulatory agencies seeking to approve such courses. The following is designed to offer this guidance:

1. General Practicum Course Guidelines
 - a. The time period for any non-residential practicum course should be consistent with the type and complexity of the assignment.
 - b. The time period for a residential practicum course should be consistent with the type and complexity of the assignment.
 - c. Practicum courses that cover multiple property types should allocate appropriate times for each assignment and subject properties should be significantly different from one another to provide appropriate training.
 - d. The maximum number of students per course should be consistent with best practices for proper student/instructor ratios.
 - e. In order for this type of experience to be compliant with USPAP, the student/appraiser must list the course provider for the practicum course as the client and the intended user.
 - f. The intended use of the report should be indicated as, “For experience credit.”
2. Appraisal Assignment Guidelines
 - a. The appraisal should employ all of the approaches to value applicable to the assignment.
 - b. Property types and complexity should be those typically encountered by an appraiser seeking experience within the specified credential category.

- c. The appraisal should indicate the intended user and intended use and should solve typical appraisal problems – e.g., mortgage assignments, tax appeals, estates, etc.
 - d. There should be an identifiable subject property and the student should inspect it.
 - e. The actual subject property may change from time to time, but the property type should remain the same.
 - f. All comparable data researched, analyzed, and used in the assignment should be actual and identifiable market data.
 - g. All comparables utilized should be verified with at least one market participant of the sale/rent – e.g., buyer, seller, or broker – and the student should also inspect the exterior of each comparable utilized.
 - h. The final assignment should be communicated in compliance with the Appraisal Report option of STANDARD 2 of USPAP.
 - i. The final reports should be maintained by the student according to the Record Keeping section of the ETHICS RULE of USPAP.
 - j. The practicum course should result in an appraisal and appraisal report completed in accordance with the current version of USPAP.
3. Instructor Guidelines
- a. An instructor conducting a residential experience practicum course should hold either a Certified Residential or Certified General credential in good standing.
 - b. An instructor conducting a general experience practicum course should hold a Certified General credential in good standing.
 - c. The instructor should demonstrate compliance with the COMPETENCY RULE of USPAP for the type of assignment.
 - d. The instructor should grade and correct all assignments and should ensure USPAP compliance.
 - e. The instructor should meet with the students a minimum of 50% of the course hours during the course.

AQB GUIDE NOTE 5 (GN-5)

AQB GUIDANCE FOR CRITERIA IMPLEMENTATION

THIS GUIDE NOTE RELATES TO RECIPROCITY, TEMPORARY PRACTICE, RENEWALS, AND APPLICATIONS FOR THE SAME CREDENTIAL IN ANOTHER JURISDICTION, AS SPECIFIED IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA.

Under “*Criteria Applicable to All Appraiser Classifications*” in the *Criteria*, Section II Existing Credential Holders, reads as follows:

Existing credential holders in good standing in any jurisdiction shall be considered in compliance with current Appraiser Qualifications Board Real Property Appraiser Qualification Criteria if they have passed an AQB approved qualifying examination for that credential. This applies to reciprocity, temporary practice, renewals, and applications for the same credential in another jurisdiction. All credential holders must comply with ongoing requirements for continuing education and state renewal procedures.

The intent of the AQB is to allow current credential holders who are in good standing within their jurisdictions to obtain reciprocal credentials, temporary practice permits, renewals of existing credentials, and an equivalent credential in another jurisdiction without having to meet the current AQB *Criteria*. If an appraiser holds a valid appraiser credential supported by an AQB approved examination, the appraiser will be deemed by the AQB to be in full compliance with the current *Criteria*.

For example, if a Certified General credential holder who received a credential prior to adoption of the current *Criteria* in one jurisdiction were to relocate to another jurisdiction after adoption of the current *Criteria*, for AQB purposes that existing “home” state credential would be sufficient to support an equivalent credential in the “new” state. The credential holder would be deemed to have met the current *Criteria* for education, experience and examination.

The AQB understands that the individual Title XI jurisdictions must operate in compliance with applicable state laws with regard to reciprocity, temporary practice, renewals, and applications for the same credential in another jurisdiction. While Title XI jurisdictions are only required to meet the AQB *Criteria*, existing state laws may require that these minimums be exceeded. It is possible that a jurisdiction, because of existing law, might require an applicant for an equivalent credential from another jurisdiction to meet all of the current AQB *Criteria* (i.e., education, experience, and examination) in order to obtain the credential in their jurisdiction.

For example, consider an appraiser who holds a Certified General credential in State A and decides to relocate to State B. State B must apply both AQB *Criteria* and State law in determining whether the appraiser from State A qualifies for an appraiser credential in State B. While the AQB considers the valid existing credential in State A to be adequate documentation of conformance to AQB *Criteria*, some State laws might require the appraiser to submit a complete application, including appropriate documentation of experience, education, and successful exam completion. This new application requirement might involve some of the following issues:

- Depending on the wording of the State law, this could mean that the appraiser from State A would have to conform to the current *Criteria* to obtain a credential from State B. Among other things, the appraiser would have to reconstruct his/her appraisal education, perhaps going back as much as 20 to 30 years. The State, then, would have to determine whether that education conformed to the current AQB *Criteria* as implemented by State law.
- Virtually all appraiser education obtained prior to 2008 was provided in what is considered the “integrated” approach. If State B does not accept integrated educational courses, the appraiser from State A would be required to obtain 300 hours of education acceptable under current *Criteria*, plus a college degree, to qualify for a Certified General credential in State B.

It was not the AQB's intent to impose such hardships on appraisers or regulatory agencies. It was the intent of the AQB in drafting the language in Section II of "Existing Credential Holders" that jurisdictions would recognize those appraisers that held credentials prior to the adoption of the current *Criteria*. The acceptance of the existing credential holders would provide for a smooth transition from prior *Criteria* to the current (and beyond) *Criteria*.

The AQB encourages jurisdictions to examine their statutes and regulations and initiate any changes that might be necessary to facilitate a smooth transition.

AQB GUIDE NOTE 6 (GN-6)

AQB GUIDANCE FOR CRITERIA IMPLEMENTATION

THIS GUIDE NOTE RELATES TO THE VERIFICATION OF EXPERIENCE CREDIT AS SPECIFIED IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA.

Under “*Criteria Applicable to All Appraiser Classifications*” in the *Criteria*, Section V.G. (Generic Experience *Criteria*) reads as follows:

- G. *The verification for experience credit claimed by an applicant shall be on forms prescribed by the state certification/licensing agency, which shall include:*
1. *Type of property;*
 2. *Date of report;*
 3. *Address of appraised property;*
 4. ***Description of work performed by the trainee/applicant and scope of the review and supervision of the supervising appraiser;***
 5. *Number of actual work hours by the trainee/applicant on the assignment; and*
 6. *The signature and state certification number of the supervising appraiser, if applicable. Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.*

(Bold added for emphasis)

As indicated above, the *Criteria* mandates that the forms used to verify experience credit include all of the identified items. Five of the six items listed are fairly self-explanatory; however, the AQB has received inquiries regarding the intent of item #4 above (the bolded text).

It is the intent of the AQB that the verification of experience clearly identifies three things under item #4:

- 1) A description of the work performed by the trainee or applicant;
- 2) The scope of the review performed by the supervising appraiser; and
- 3) The level of supervision performed by the supervising appraiser.

Although the scope of review and level of supervision performed by the supervising appraiser might appear to be redundant at first glance, they are not. For example, in certain assignments a supervising appraiser might determine that a lesser level of supervision is required, but that might not impact the level of review performed.

The AQB recognizes that assignments may differ significantly; therefore, the level of review and supervision by the supervising appraiser may also differ from assignment to assignment. Also, depending on the assignments involved, it might be expected that the supervising appraiser’s level of review and supervision diminish over time as the trainee/ applicant gains competency.

The following page includes an example of an experience log that includes the information required by the *Criteria*. The attached is merely one possible example of an experience log. Any format that includes the items listed under Section V.G., Generic Experience *Criteria*, as specified in the *Real Property Appraiser Qualification Criteria*, is acceptable.

It should be noted that experience logs or other forms prescribed by a state appraiser regulatory agency to verify experience credit might appear very different, including requiring substantially more information than is identified in the example below. However, as stated above, all forms must, at a minimum, include the items listed under Section V.G., “Generic Experience *Criteria*,” as specified in the *Real Property Appraiser Qualification Criteria*.

Date of Report	Property Address, City, State, Zip	Type of Property (SFR, Condo, 2-4 Units)	Description Of Applicant’s Work Performed	Scope of Supervising Appraiser’s Review	Scope of Supervising Appraiser’s Supervision	Number of Actual Hours Worked By Applicant
1/3/08	123 Oak Street Washington, DC 20005	SFR	Neighborhood, subject and comp data research and analyses, interior/ exterior property inspection, cost/ sales comparison approaches, final reconciliation	Reviewed workfile and report, verified subject sales history, checked data and analyses in approaches to value utilized, discussed with applicant, co-signed appraisal report	Completed entire appraisal process with applicant, including physical inspection of subject property (first SFR appraisal for applicant)	7
6/7/08	455 Pine Street Washington, DC 20005	SFR	Neighborhood, subject and comp data research and analyses, interior/ exterior property inspection, cost/ sales comparison approach, final reconciliation	Reviewed workfile and report, verified all comparable data and analyses, verified homeowner’s association info, discussed with applicant, co-signed appraisal report	Oversight of comparable data selection and analyses, provided direction in site value analysis used in cost approach, did not physically inspect subject property	7
1/10/09	202 Spruce Street Washington, DC 20005	SFR	Neighborhood, subject and comp data research and analyses, interior/ exterior property inspection, cost/ sales comparison/ income approaches, final reconciliation	Reviewed workfile and report, checked data and analyses in approaches to value utilized, discussed with applicant, co-signed appraisal report	Review of comparable data selection and analyses, did not physically inspect subject property	10
1/24/09	115 Pennsylvania Ave. Washington, DC 20005	Retail Store	Neighborhood, subject and comp (sale and rental) data research and analyses, interior/ exterior property inspection, cost/ sales comparison/ income approaches, final reconciliation	Reviewed workfile and report, verified subject sales history and all data and analyses in approaches to value utilized, discussed with applicant, co-signed appraisal report	Completed entire appraisal process with applicant, including physical inspection of subject property (first commercial appraisal for applicant)	30

Date of Report	Property Address, City, State, Zip	Type of Property (SFR, Condo, 2-4 Units)	Description Of Applicant's Work Performed	Scope of Supervising Appraiser's Review	Scope of Supervising Appraiser's Supervision	Number of Actual Hours Worked By Applicant
8/14/09	200 S Broadway Washington, DC 20005	Retail Store	Neighborhood, subject and comp (sale and rental) data research and analyses, interior/exterior property inspection, cost/sales comparison/income approaches, final reconciliation	Reviewed workfile and report, verified subject sales history and all data and analyses in approaches to value utilized, discussed with applicant, co-signed appraisal report	Oversight of comparable data selection and analyses, provided direction in DCF analysis used in income approach, did not physically inspect subject property	40
1/10/10	300 Capitol Avenue Washington, DC 20005	Retail Store	Neighborhood, subject and comp (sale and rental) data research and analyses, interior/exterior property inspection, cost/sales comparison/income approaches, final reconciliation	Reviewed workfile and report, checked data and analyses in approaches to value utilized, discussed with applicant, co-signed appraisal report	Review of comparable data selection and analyses, did not physically inspect subject property	40
2/12/10	144 Elm Avenue Washington, DC 20005	Golf Course	Completed entire appraisal process	Reviewed workfile and report, verified subject sales history and all data and analyses in approaches to value utilized, discussed with applicant, co-signed appraisal	Completed entire appraisal process	60

Thomas D. Trainee
Applicant/Trainee Appraiser

Sally A. Supervisor
Supervisory Appraiser

State
Certification No.

AQB GUIDE NOTE 7 (GN-7)

THIS GUIDE NOTE RELATES TO DEGREE PROGRAMS IN REAL ESTATE REVIEWED BY THE AQB, AND THEIR APPLICABILITY TOWARDS THE QUALIFYING EDUCATION SPECIFIED IN THE REQUIRED CORE CURRICULUM.
RETIRED, JANUARY 2015

AQB GUIDE NOTE 8 (GN-8)

THIS GUIDE NOTE RELATES TO THE COLLEGE-LEVEL EDUCATIONAL REQUIREMENTS AS SPECIFIED IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA THAT BECAME EFFECTIVE ON JANUARY 1, 2008.
RETIRED, JANUARY 2015

AQB GUIDE NOTE 9 (GN-9)

THIS GUIDE NOTE RELATES TO THE BACKGROUND CHECK REQUIREMENTS AS SPECIFIED IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA EFFECTIVE ON JANUARY 1, 2017.

Under “*Criteria Applicable to All Appraiser Classifications*” in the *Real Property Appraiser Qualification Criteria*, Section VII. Background Checks, reads as follows:

All applicants for a real property appraiser credential shall possess a background that would not call into question public trust.

Some jurisdictions have been performing background checks since the implementation of real property appraiser credentialing, while others have not. This Guide Note is intended to provide additional guidance, in particular to those jurisdictions with little to no experience in evaluating an applicant’s background as part of the applicant’s overall fitness for licensure or certification.

EXAMPLES OF ISSUES TO CONSIDER

Some of the types of background issues that state appraiser regulatory agencies might consider include, but are not limited to, applicants who have:

- (1) Had an appraiser license or certification revoked in any governmental jurisdiction.
- (2) Been convicted of, or pled guilty or *nolo contendere* to, a crime involving moral turpitude.
- (3) Been convicted of any crime *that is substantially related* to the qualifications, functions, or duties of the profession of real estate appraisal.
- (4) Performed any act, which if done by the holder of a real property appraiser credential, would be grounds for revocation or suspension of such a credential.
- (5) Knowingly made a false statement of material fact required to be disclosed in an application for any professional license or certification.
- (6) Been prohibited from participating in the affairs of an insured depository institution pursuant to Section 19(a) of the Federal Deposit Insurance Act (12 U.S.C. Section 1829).

SUBSTANTIAL RELATIONSHIP

A crime or act may be deemed substantially related to the qualifications, functions, or duties of an appraiser if, to a substantial degree, it evidences present or potential unfitness of a person applying for or holding a real property appraiser credential to perform the functions authorized by the credential. Examples of the types of crimes or acts include, but are not limited to, the following:

- (1) Taking, appropriating, or retaining the funds or property of another.
- (2) Forging, counterfeiting, or altering any instrument affecting the rights or obligations of another.
- (3) Evasion of a lawful debt or obligation, including but not limited to tax obligations.
- (4) Traffic in any narcotic or controlled substance in violation of law.

- (5) Violation of a relation of trust or confidence.
- (6) Theft of personal property or funds.
- (7) Crimes or acts of violence or threatened violence against persons or property.
- (8) The commission of any crime or act punishable as a sexually related crime.
- (9) Misrepresentation of facts or information on the appraisal license or certification application.
- (10) Cheating on an examination for a real property appraiser credential.

REHABILITATION

Upon a determination that an applicant's background is inconsistent with public trust, state appraiser regulatory agencies should consider all evidence related to the extent an applicant is rehabilitated, including testimony or other documentation demonstrating things such as:

- (1) The effect of the passage of time since the most recent act or crime.
- (2) Restitution by the applicant to any person who has suffered monetary losses.
- (3) Judicial relief from the consequences of criminal convictions resulting from immoral or antisocial acts, including but not limited to release from probation, finding of factual innocence, a completed program of diversion, or other comparable orders of a court.
- (4) Successful completion or early discharge from probation or parole.
- (5) Abstinence from the use of controlled substances or alcohol for not less than two years if the crime or offense is attributable in part to the use of controlled substances or alcohol.
- (6) Payment of any fine or other imposed monetary penalty.
- (7) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the act or conviction.
- (8) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (9) Discharge of, or bona fide efforts toward discharging adjudicated debts or monetary obligations to others.
- (10) Mitigating facts or circumstances that reasonably indicate that an applicant will perform appraisal-related activities honestly, fairly, and ethically.
- (11) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (12) Significant or conscientious involvement in community, church, or privately-sponsored programs designed to provide social benefits.
- (13) New and different social and business relationships from those that existed at the time of the act or crime.
- (14) Change in attitude from that which existed at the time of the act or crime, as evidenced by any or all of the following:
 - a) Testimony of applicant.
 - b) Evidence from family members, friends, or other persons familiar with applicant's previous conduct and his or her subsequent attitudes and behavioral patterns.
 - c) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

- d) Evidence from psychiatrists or other persons competent to testify with regard to psychiatric or emotional disturbances.

The above is intended to be illustrative, not exhaustive. State appraiser regulatory agencies, in performing their due diligence when examining an applicant's qualifications for a real property appraiser credential, may elect to include additional items not identified in this Guide Note. Likewise, state appraiser regulatory agencies may determine, based on their own experience and history, that some of the items identified in this Guide Note may not be applicable to an applicant seeking a real property appraiser credential in that jurisdiction.

AQB GUIDE NOTE 10 (GN-10)

THIS GUIDE NOTE RELATES TO THE COLLEGE-LEVEL EDUCATION REQUIREMENTS FOR THE CERTIFIED RESIDENTIAL CLASSIFICATION AS SPECIFIED IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA THAT BECAME EFFECTIVE MAY 1, 2018.

Section III. B. 3. of the “Qualifying Education” requirements for the Certified Residential credential in the *Real Property Appraiser Qualification Criteria* states that Certified Residential applicants may obtain a credential by successfully completing 30 semester hours of college-level courses that cover each of the following topic areas and hours:

- a. English Composition (3 semester hours);
- b. Microeconomics (3 semester hours);
- c. Macroeconomics (3 semester hours);
- d. Finance (3 semester hours);
- e. Algebra, Geometry, or higher mathematics (3 semester hours);
- f. Statistics (3 semester hours);
- g. Computer Science (3 semester hours);
- h. Business or Real Estate Law (3 semester hours); and
- i. Two elective courses in any of the topics listed above or accounting, geography, agricultural economics, business management, or real estate (3 semester hours each).

The intent of this guidance is to assist regulatory agencies and applicants with determining which types of college-level courses may count toward these requirements. Although several course titles are provided as acceptable options, the content of the course is far more meaningful than the actual title. Therefore, there may be acceptable courses that contain similar content but do not have titles referenced in this Guide Note.

1. **English Composition** – *English Composition is the professional field of writing.*

Possible alternative course titles for this section include, but are not limited to: College Composition; Descriptive / Critical / Expository / Technical / Public / Business / Professional Writing; Foundations of the English Language; Writing Fiction; Writing Creative Non-Fiction; or Rhetoric and Writing.

2. **Microeconomics** – *The study of individuals, households, and firms’ behavior in decision making and allocation of resources. It generally applies to markets of goods and services and deals with individual and economic issues.*

Most college-level education on this topic includes the word “microeconomics” in the course title.

3. **Macroeconomics** – *Studies of the behavior and performance of an economy as a whole. It focuses on the aggregate changes in the economy such as unemployment, growth rate, gross domestic product, and inflation.*

Most college-level education on this topic includes the word “macroeconomics” in the course title.

4. **Finance** – *The management of revenues; the conduct or transaction of money matters generally, especially those affecting the public, as in the fields of banking investment.*

Possible alternative course titles for this section include, but are not limited to: Corporate Finance; Introduction to Business; Financial Markets and Institutions; International Business Finance; Principles of Finance; or Real Estate Finance and Investment.

5. **Algebra, Geometry, or Higher Mathematics** – *Higher mathematics includes advanced portions of mathematics beyond ordinary arithmetic, geometry, and algebra.*

Possible alternative course titles for this section include, but are not limited to: Algebra; Applied Math; Calculus; Differential Equations; Finite Mathematics; Geometry; Logic; Precalculus; Probability and Statistics; or Trigonometry.

6. **Statistics** – *Branch of mathematics concerned with collection, classification, analysis, and interpretation of numerical facts, for drawing inferences based on their quantifiable likelihood (probability). Statistics can interpret aggregates of data too large to be intelligible by ordinary observation because such data (unlike individual quantities) tend to behave in a regular, predictable manner. It is subdivided into descriptive statistics and inferential statistics.*

Possible alternative course titles for this section include, but are not limited to: Applied Linear Models; Bayesian Theory and Data Analysis; Business Statistics; Exploratory Data Analysis; Introduction to Statistics; Multivariate Data Analysis; Non-Parametric Theory and Data Analysis; Probability Statistics; Sampling; Statistical Analysis; Statistical Reasoning; Statistical Methods; or Time Series Analysis.

7. **Computer Science** – *A branch of science that deals with the theory of computation or the design of computers.*

Possible alternative course titles for this section include, but are not limited to: The Computer Science Profession; Introduction to Computer Science / Computers / Information Technology / Programming / Software Systems / Software Development / Web Development; Data Management; Database Fundamentals; Integrated Computer Applications; Object Oriented Programming; or System Administration.

8. **Business or Real Estate Law** – *Business law, sometimes called mercantile law or commercial law, refers to the laws that govern the dealings between people and commercial matters. There are two distinct areas of business law: regulation of commercial entities through laws of partnership, company, bankruptcy, and agency; and regulation of the commercial transactions through the laws of contract. The course titles will typically include compliance, risk, legal framework, and writing contracts.*

Real estate law is a branch of civil law that covers the right to possess, use, and enjoy land and the permanent man-made additions attached to it.

Possible alternative course titles for this section include, but are not limited to: Business Law for Accountants; Corporate Law Compliance; Drafting Policies and Procedures; Enterprise Risk Management; Financial Ethics; Legal Aspects of Real Estate; The Legal Environment of Business; Business Organization Law; or Writing Contracts.

9. **Two elective courses in accounting, geography, agricultural economics, business management, or real estate.**

Accounting – *Accounting is the system of recording and summarizing business and financial transactions and analyzing, verifying, and reporting the results.*

Possible alternative course titles for this section include, but are not limited to: Accounting Principles; Financial Accounting; Financial Markets and Institutions; Managerial Accounting; or Real Estate Market Analysis.

Geography – *Geography is the study of the physical features of the earth and its atmosphere, and of human activity as it affects and is affected by these, including the distribution of populations and resources, land use, and industries.*

Possible alternative course titles for this section include, but are not limited to: GIS Data Capture; Introduction to Geographic Information; Physical Geography; or World / Regional Geography.

Agricultural Economics – *An applied field of economics concerned with the application of economic theory in optimizing the production and distribution of food and fiber — a discipline known as agronomics.*

Possible alternative course titles for this section include, but are not limited to: Agribusiness Management; Agricultural Management Principles; Concepts in Agricultural Economics; Issues in Agriculture; Microeconomic Concepts in Agricultural Economics; or Quantitative Methods and Price Analysis.

Business Management – *The activities associated with running a company, such as controlling, leading, monitoring, organizing, and planning.*

Possible alternative course titles for this section include, but are not limited to: Business Marketing; Human Resource Management; Organizational Behavior; or Operations Management.

Real Estate – *Real estate is the property, land, buildings, air rights above the land and underground rights below the land.*

Possible alternative course titles for this section include, but are not limited to: Commercial Lease Analysis; Fundamentals of Investment Analysis; Fundamentals of Real Estate Transactions; Managing Commercial Properties; Market Analysis; Real Estate Economics; Real Estate Finance; Real Estate Procedures; or Real Estate Studies.

AQB GUIDE NOTE 11 (GN-11)

THIS GUIDE NOTE RELATES TO THE PRACTICAL APPLICATIONS OF REAL ESTATE APPRAISAL (PAREA) REQUIREMENTS AS SPECIFIED IN THE REAL PROPERTY APPRAISER QUALIFICATION CRITERIA EFFECTIVE ON JANUARY 1, 2021.

AQB GUIDANCE FOR DELIVERY METHODS AND TECHNIQUES IN PAREA TRAINING

Guide Note 11 (GN-11) contains guidance for the delivery of PAREA training. The suggested delivery methods and techniques follow each of the required content areas as identified in the PAREA section of the Criteria, and are abbreviated using the following legend:

Method	Abbreviation
Computer Based Learning	CBL
Video Gaming	VG
Video Tutorial	VT
Virtual Assistant	VA
Virtual Reality Training	VRT

These delivery methods and techniques may be amended from time-to-time to reflect changes in technology or required PAREA content.

PRACTICAL APPLICATIONS OF REAL ESTATE APPRAISAL (PAREA)

The goal of the following is to suggest potential technologically based delivery methods that could be used in the development of exercises, examples, simulations, case studies, and applications as are appropriate to create practical experience expected to be gained by an appraiser seeking a license credential with respect to the content outline in Section 3. PAREA providers may utilize some, all or a combination of the well-established methods described above. Providers are encouraged to utilize a variety of methodologies to ensure a comprehensive experience resulting in participants having sufficient practical experience to enable success in obtaining an appraisal license or certification.

MINIMUM CONTENT REQUIREMENTS – LICENSED RESIDENTIAL CLASSIFICATION

I. Introduction

A. General Considerations and Responsibilities [CBL, VT]

1. Discuss respecting the public trust
2. Review and comment on Appraiser Independence Requirements
3. Review and comment on the responsibilities to clients regarding reconsideration of value requests and other communication

Methods and Techniques

- *Highlight USPAP considerations (e.g. improper influence, prior services) [VT, VG]*
- *Demonstrate Appraiser Independence Requirements (AIR) and other regulatory guidance, with examples of acceptance and unacceptable conditions [CBL, VT, VG]*

B. Appraisal Basics - Software and Tools [CBL, VT, VRT]

1. Overview of software options (vendors) and common forms
2. Overview of Common tools: measuring devices, cameras, etc.

Methods and Techniques

- Identify various appraisal-related technology tools [VT, VA]
- Introduce and demonstrate the use of appraisal software [VA, VG, CBL]
- Identify and demonstrate the use of various measuring tools [VA, VG, CBL]
- Require completion of training on a base level camera as well as instruction on camera etiquette – obtaining consent to photograph certain subjects, such as children, personal effects, etc. [VT, VA, VG]
- Develop challenges around Graham-Leach-Bliley Act, Privacy/Information Security [VT, VA, VG]

II. Problem Identification**A. Understanding Assignment Parameters [CBL, VG, VT, VA]**

1. Perform initial review of order/engagement letter, determine authoritative lines of communication. Provide interactive exercises in extracting key information from engagement letter.

B. Understanding Assignment Elements and Competency Issues [VG, VT, VA, VRT]

1. Examine appraisal request and other documents provided (e.g. title reports, surveys, purchase contract) to determine key assignment elements (Standards Rule 1-2(a)–Standards Rule 1-2(d), and the SCOPE OF WORK RULE), and/or contractual obligations. Determine relevant appraisal assignment conditions. Understanding client, intended use, intended users, engagement letter terms, various assignment types, basis for assignment conditions, extraordinary assumptions, and hypothetical conditions.
2. Provide exercises for defining the problem. Goal is for participant to establish appropriate steps in appraisal process.
3. Exercises should contain overlays introducing key engagement items that could affect scope of work.
4. Ensure that the exercise demonstrates impact on both assignment conditions and elements.
5. Include exercises where appraiser can identify during problem definition process the existence of possible extraordinary assumptions and/or hypothetical conditions.
6. Demonstrate how competency issues are identified and will be resolved.

C. Market, Neighborhood, and Subject Property Research [CBL, VT, VA, VRT]

1. Utilize preliminary online/archival research to gain basic market area and subject property information.
2. Must develop the general area and neighborhood market analysis.
 - a. Overview of available data sources for market area information.
3. Retrieval/analysis of preliminary information necessary for understanding subject site and improvements.
4. Review of public record information including site and improvement information.
5. Utilization of MLS/online sites as a verification source.
6. Based on information gathered above, develop and explain key relevant property characteristics {Standards Rule 1-2(e)}.

Methods and Techniques

- Perform a sample neighborhood “fly-by” with characteristics as specified above being identified [VT, VA, VRT].
- Review simulated MLS data to evaluate supply/demand [VT, VA, VG, CBL].
- Review public and private sources (e.g., proprietary data, Trulia, Zillow) [VT, VA, CBL].
- Analyze information from simulations to reveal trends on growth, values, prices, marketing times [VT, VA, VG, CBL].
- Collect data on simulated neighborhood using multiple examples and iterations (e.g., census, population trends, imitated zoning) [VT, VA, VG, CBL].
- Visually illustrate typical area boundaries (e.g., roadways, natural boundaries, zoning clusters) using multiple examples [VT, CBL, VG].
- Use simulated data tools (e.g., MLS, aggregators) to identify and determine price trends, market supply (current and historical information) [VT, VA, CBL].
- Using simulated property record system, obtain attributes of a subject property [VA, CBL].

D. Obtaining Preliminary Subject Property Information [CBL, VG, VT, VA, VRT]

1. Simulate setting the inspection appointment with related requests/requirements
2. Determine how you will verify individual providing access
3. Review of inspections and reports provided by others and discuss their application and disclosure in the assignment

Methods and Techniques

- Create multiple scenarios to determine the adequacy of inspections (i.e., personal inspection, inspection by third party, and virtual inspection) and third-party reports to ensure an appropriate Scope of Work [VA, CBL]
- Create multiple scenarios (using good and bad examples) for inspection scheduling, communication, verification of data, etc. [VT, VA, VG]
- Conduct specific Q&A examples with virtual agent/broker, tenant, property owner, etc. [VT, VA, VG]

III. Review Sections I and II with Mentor

- A. Ensure the problem identification process was performed properly leading to an appropriate scope of work.
- B. Review research performed to evaluate suitability and that the quantity of information will be satisfactory for later development and analysis.

IV. Property Identification and Inspection along with Initial Site Identification [CBL, VG, VA, VRT]

- A. Research available information sources including public records
- B. Zoning, general plan information
 1. Identify where to locate all sources of information
 2. Verification of revisions to zoning/general plan
 3. Variances, use restrictions
- C. Environmental issues, flood zone/earthquake information. Identify and explain unusual issues
 1. Location of relevant research information
 2. Communicate any unusual findings to the client to confirm whether assignment is to be completed

Methods and Techniques

- Demonstrate zoning map and analysis [VT/VA/CBL]
- Demonstrate flood map system and analysis [VT/VA/CBL]
- Demonstrate earthquake map and analysis [VT/VA/CBL]
- Demonstrate sample GIS system and analysis [VT/VA/CBL]

V. Verification of Neighborhood and Market Area [CBL, VT, VA, VRT]

- A. Conduct virtual inspection/review of subject's market area
- B. Explain various influences
- C. Identify and explain trends/characteristics in the defined neighborhood and market area

Methods and Techniques

- Virtual neighborhood tours identifying positive and negative influences [VT, VA, VRT]
- Demonstrate use of web-based mapping tools (e.g. Google Earth, Google Maps) and how to use analytics [VT, VA, CBL]

VI. Subject Site Inspection [CBL, VT, VA, VRT]

- A. Verify similarity to plat, Observation of site utility, its surrounding influences, and possible conditions that could impact value or marketability
- B. Analysis of site improvements and useable site area.
 1. Determine and explain how useable site area relates to surrounding properties

C. Identify and discuss various site amenities. Include exercises that include various levels of impact on value

Methods and Techniques

- Illustrate different site conditions, offer multiple options within each example, provide description choices, demonstrate appropriate analyses of scenarios [VT, VA, VRT]

VII. Subject Property Improvements Inspection [CBL, VT, VA, VRT]

A. Overview

1. Types/quality of construction
2. Floor plan issues, determination of room counts
3. Observable condition factors and description of upgrades
4. Recognition of potential/existing adverse influences

B. Conduct a virtual physical inspection to determine relevant physical characteristics

C. Provide a thorough description of improvements

Methods and Techniques

- Provide multiple examples (variety) of architecture, material types for exterior and interior surfaces, condition, quality, mechanicals, electrical systems and provide exercises for proper identification and analysis [VT, CBL]
- Identify physical and functional obsolescence, lack of conformity [VT, CBL]

VIII. Measuring the Subject Property Improvements [CBL, VG, VT, VA, VRT]

A. Exercises to include methods and ultimately determination of:

1. Basements
2. Stairways & vaulted ceiling areas
3. Below grade living area (split level)
4. Accessory dwelling units, outbuildings, etc.
5. Awareness of special assignment conditions
6. Common rounding practices

B. Include virtual exercises in measuring subject properties

C. Other sources for obtaining GLA

IX. Sketch Completion [CBL, VT, VRT]

A. Include sketch completion exercises

B. Exercises must include final GLA determination (what areas should be extracted from GLA)

Methods and Techniques

- Demonstrate sketch measurement software applications using computers, tablets, handheld devices, etc. for various home designs (e.g., 1-story, 2-story, split-level, bi-level) [VT, VA, VG, VRT]
- Include multiple variations (e.g., bay windows, overhangs, open space 2nd story, basements, etc.) [VT, VA, VG, VRT]
- Include various tools (e.g., laser, roller, tape, etc.) [VT, VA, VG, VRT]
- Calculate square footage from plans and specs [VT, VA, VG, VRT]
- Complete several examples on a sketch program [VT, VA, VG, VRT]

X. Review Sections IV thru IX with Mentor

A. Ensure all elements of inspection process have been performed properly, including neighborhood, site, and improvements

XI. Market Analysis/Highest and Best Use [CBL, VRT, VA, VT]**A. Highest and Best Use**

1. Overview of pertinent data, including actual current/proposed/potential alternative use and communication of highest and best use

B. Performing Neighborhood and Market Research

1. Identify the market area boundaries, physical characteristics, and specific property location relevant to the analysis of the subject property.
2. Identify the trends and characteristics in the defined neighborhood and market area.

Methods and Techniques

- Provide exercises reviewing and analyzing various property and site characteristics related to property use and the factors for determining highest and best use [CBL, VRT, VA, VG]
- Provide exercises reviewing market information, including maps, satellite images, aerial photographs, economic data, census data and analysis from third parties to determine boundaries, physical characteristics, and other factors relevant to the subject market area [CBL, VRT, VA, VT, VG]
- Provide exercises reviewing market and neighborhood information such as maps, plat maps, satellite images, aerial photographs, economic data, census data, etc. to determine neighborhood boundaries, characteristics and trends related to the analysis of the subject property [CBL, VRT, VA, VT, VG]

XII. Review Section XI with Mentor**A. Ensure key analytical issues related to market conditions and highest and best use are effectively addressed****XIII. Process of Sales Analysis [CBL, VG, VT, VA, VRT]****A. Identify the best sources of sales data for use in case studies including:**

1. MLS
2. City/County (public) transfer records
 - a. How to verify
3. Data providers
4. Appraiser office files
 - a. Confidentiality concerns
5. Real estate agents/brokers
 - a. How to verify

B. Select the same or similar property types, uses, and characteristics.

1. Identify elements of comparison
2. Develop exercises for various property types

C. Identify all relevant current listings, expired listings, withdrawn listings, offers (if available), FSBO, closed sales, and pending sales*Methods and Techniques*

- Demonstrate a typical MLS search, and other less common search options [VT/VA]
- Perform searches to identify applicable sales from a group of potential transactions [VT/VA/VG/CBL]
- Develop and demonstrate rationale for selection of sales [VT/VG/CBL]
- Conduct an interactive interview (incorporating checklist) on sales data confirmation [VT/VA]
- Research prior sales history with simulated data sites (e.g., assessor, public records, proprietary sources) [VT/VG/CBL]
- Identify appropriate elements of comparison [VT/VA/CBL]
- Introduce confidentiality issues related to use of non-public information [VT/VA/VG]
- Update workfile with results, incorporate electronic vs. paper vs. combination [VT/VA]

XIV. Review Section XIII with Mentor**A. Ensure all necessary steps in highest and best use analysis and market analysis were performed properly. Review data source material to assure sufficient information has been identified for further application.****XV. Valuation Approaches and Techniques [CBL, VG, V, VA, VRT]****A. Consider each approach to value and explain the appropriateness based on the intended use of the assignment. Select the data considered most meaningful and relevant.**

B. Sales Comparison Approach

1. Analyze quality and quantity of data
 - a. Identify relevant units of comparison
 - b. Data and information collected must be analyzed for comparability and consistency
2. Select the sales that are considered the most appropriate for subject property comparability (demonstrate the process)
 - a. Identify and apply appropriate adjustments to comparable transactions based on differences to the subject property. Demonstrate applicable tools and methods, including:
 1. Paired sales analysis
 2. Statistical and other graphic analysis
 3. Trend analysis
 4. Qualitative differences, including:
 - i. Relative comparison analysis
 - ii. Ranking analysis
3. Discuss and reconcile key elements developed in the sales comparison approach

Methods and Techniques

- *Using simulated data, identify applicable approach(es) to value [VT, VG, CBL]*
- *Complete multiple sales comparison analyses using previously selected data for both vacant land and improved sites, incorporating applicable techniques to estimate appropriate adjustments [VT, VG, CBL]*
- *Add complexity at a basic level for commonly encountered external influences, super-adequacies, functional obsolescence [VT, VA, VG, CBL]*
- *Develop value opinions for multiple scenarios [VT, VG, CBL]*
- *Demonstrate proper and improper examples of reconciliation, develop appropriate reconciliation [VT, VG, CBL]*

C. Cost approach

1. Develop site value of the subject as vacant using recognized methods or techniques
 - a. Include contributory value of site improvement
2. Discuss use of replacement or reproduction cost
 - a. Develop supportive data for the cost calculations
 - b. Calculate cost new for the improvements
 - c. Calculate depreciation (demonstrate and apply types, consider market trends)
 - d. Discuss and reconcile key elements developed in the cost approach

Methods and Techniques

- *Complete a basic cost new, utilize several different cost approach models [VT, VG, CBL]*
- *Develop credible opinions of site value [VT, VG, CBL]*
- *Add basic level complexity (e.g., new homes, remodeled homes, homes having inadequacies) [VT, VA, VG, CBL]*
- *Develop supportable depreciation estimates, age-life method, add basic level complexities (e.g., repairs, obsolescence) [VT, VG, CBL]*
- *Develop indicated values by the cost approach [VT, VG, CBL]*
- *Demonstrate proper and improper examples of reconciliation, develop appropriate reconciliation on multiple examples [VT, VA, VG, CBL]*

D. Income approach

1. Collection and verification of pertinent rental data (actual vs. contract)
2. Determine appropriate GRM (Gross Rent Multiplier)
3. Discuss and reconcile key elements developed in the income approach

Methods and Techniques

- *Develop appropriate comparison factors involved for gross rental estimate, sources [VT, VG, CBL]*
- *Identify comparables using simulated data sources (e.g., MLS, interviews, proprietary sources, door knocking, etc.) for rental information [VT, VA, CBL]*
- *Develop credible opinions of market rent [VT, VG, CBL]*
- *Develop GRM's from simulated comparable properties [VT, VG, CBL]*

- Develop indicated values by the income approach [VT, VG, CBL]
- Demonstrate proper and improper examples of reconciliation, develop appropriate reconciliation [VT, VG, CBL]

XVI. Review Section XV with Mentor

- A. Ensure all approaches to value were adequately considered and completed in supportable fashion (including cost and/or income approaches if performed)

XVII. Final Reconciliation [CBL, VG, VT, VA, VRT]

- A. Analyze and discuss accuracy and sufficiency of data
- B. Analyze and discuss strengths and weaknesses of each approach to value and their applicability to the subject property
- C. Analyze and discuss consistency of data and development
- D. Analyze and discuss the quality and quantity of data
- E. Review calculations
- F. Develop the final opinion of value along with the rationale for your conclusions

Methods and Techniques

- Demonstrate multiple scenarios using the various approaches to analyze their strengths and weaknesses [VT, VA, VG, CBL]
- Perform check for accuracy of math and calculations [VT, VA, VG, CBL]
- Demonstrate proper and improper examples of reconciliation, develop appropriate reconciliation [VT, VA, VG, CBL]

XVIII. Review Section XVII with Mentor

- A. Ensure final reconciliation was performed properly and determine appropriate reporting

XIX. Appraisal Report Development/Delivery [CBL, VG, VT, VA, VRT]

A. Report Development

- Standards Rule 2-1 minimum standard (not misleading, sufficient, assumptions, etc.)
 - Ability to describe the subject property and comparable properties used in the analysis (ensure compliance with STANDARD 2)
 - Technical terms
 - Common industry phrases and descriptors
 - Fair lending do's and don'ts
 - Identify relevant information using industry typical approaches and technologies
 - Ability to describe a market area and a neighborhood (same subset as above)
 - Report format
 - Comply with all applicable assignment elements and conditions
 - Awareness and compliance with state and federal regulatory requirements
 - Describe scope of work
 - Ensure applicable appropriate addenda, exhibits, photos, etc. are included
 - Understand adequacy/relevance/integrity of photos, maps, and exhibits – how/where to upload in a report
 - Certification
 - Ensure familiarity with pre-printed content and applicability.
 - Develop exercises on completion of workfile documents
 - Demonstrate an ability to store and compile documents

Methods and Techniques

- Complete appraisal reports using several styles (e.g., forms such as 1004, condo, 2-4 units, short narrative) [VG, CBL]
- Provide samples of prior service disclosures (i.e., certifications) [VT, VA]

- Provide opportunities to create multiple versions of required exhibits (e.g., photos, sketches, maps) using simulated data [VT, VA, VG, CBL]
- Provide sample certifications, include correct and incorrect examples [VT, VA, VG, CBL]
- Provide sample limiting conditions, include correct and incorrect examples [VT, VA, VG, CBL]
- Verify required contents of workfile, incorporating examples of items that should/should not be included [VT, VA, VG, CBL]
- Demonstrate/use document storage examples (e.g., password, back-up) [VT, VA, CBL]

XX. Review Section XIX with Mentor

- Ensure that the key components of an appraisal report and report format are appropriate for assignment(s)

XXI. Communication of Assignment Results [CBL, VT, VA, VRT]

A. Adequacy and relevance of information

- USPAP compliance
- Assignment conditions

B. Understand common Client-specific requirements – additional comparable sales, inclusion of active listings in the report, supplemental exhibits, etc.

- Demonstrate the ability to meet client expectations conveyed through the engagement letter or other instruction methods
- Adequate support for analysis

C. Explain and support rationale for excluding any of the traditional approaches

- Explain and support reconciliation
- Explain all assumptions

D. Explain and support all extraordinary assumptions and hypothetical conditions (state their use may have effect on assignment results)

Methods and Techniques

- Ensure adequacy and relevancy of information in report [VT, VG, CBL]
- Demonstrate examples of reports containing information specifically required by clients, regulators, or applicable assignment conditions [VA, VT, VG, CBL]
- Ensure accuracy and consistency of information throughout report [VT, VG, CBL]
- Provide various report samples that contain both adequate and inadequate communication [VT, VA]
- Provide opportunities to review and correct errors in reports [VT, VA, VG, CBL]
- Provide opportunities to review and correct inappropriate assumptions, extraordinary assumptions and hypothetical conditions [VT, VA, VG, CBL]
- Provide various samples of appropriate and inappropriate requests for corrections, clarifications and Reconsiderations of Value, demonstrating appropriate responses (e.g., no changes, modifications to report, requirement for new assignment, etc.) [VT, VA, VG, CBL]

XXII. Review Section XXI with Mentor

- Ensure understanding of effective appraisal report presentation and required content
- Ensure compliance with Standards Rule 2-2

MINIMUM CONTENT REQUIREMENTS – CERTIFIED RESIDENTIAL CLASSIFICATION

I. Problem Identification

A. Relevant Scope of Work and Competency Issues Involved [CBL, VG, VT, VA, VRT]

- Develop exercises on how competency issues will be resolved.
- Conduct a preliminary analysis to ensure an appropriate Scope of Work

Methods and Techniques

- Provide sample engagement letters for review and analysis [VT, VA, CBL]
- Provide samples of complex residential properties (e.g., ADUs, 2-4 unit group homes, student housing, short-term rentals, co-ops, leaseholds, etc.) [VT, VA, CBL]

- Perform required research using simulated data (e.g., public sources, proprietary databases) [VT, VA, VG, CBL]

II. Review Section I with Mentor

- Ensure understanding of how issues uncovered during property identification process relate to complexity. Also, focus on complex ownership issues

III. Positive or Negative Locational Influences [CBL, VG, VT, VA, VRT]

- Recognize Population/Employment Trends
- Determine and discuss relationships between employment, population, and residential units (Single Unit Residential vs. 2-4 Unit Residential) over time

IV. Residential Market Analysis/Highest and Best Use [CBL, VRT, VG, VT]

- Market Analysis Issues Related to Highest and Best Use for Complex Properties
- Special Assessments

Methods and Techniques

- Provide exercises reviewing and analyzing various property and site characteristics that would be considered complex in nature, including current and proposed use; include consideration of the factors for determining highest and best use [CBL, VRT, VG, VT]
- Provide exercises reviewing data from public records, title records, CCR documents, etc., that describe current and planned special assessments for various property ownership types (one family, condominium, planned unit developments, Cooperative, etc.) to determine impact on market analysis [CBL, VRT, VG, VT]

V. Review Section III and IV with Mentor

- Ensure key analytical issues related to market conditions and highest and best use are effectively addressed

VI. Physical Characteristics of Complex Properties [CBL, VG, VA, VRT]

- Unique Design Features
- High Quality/Amenity Properties
- Over-improvements
- Physical Deficiencies of Improvements
- Functional Inadequate and Super Adequate Impact

VII. Vacant Sites (Including View Amenities, Surplus Land) [CBL, VG, VT, VA, VRT]

- Develop exercises that contain issues covered under Site and Cost Approaches

Methods and Techniques

- Identify and analyze impact of complex property characteristics (e.g., atypical size, view, design, historical ranking) [VT, VA, VG]
- Exercises comparing and analyzing typical homes with outliers [VT, VG, CBL]
- Exercises identifying and understanding the influence of locational influences through observation and comparison [CBL, VG, VT, VA, VRT]

VIII. Use of Key Statistical Concepts [CBL, VG, VT, VA, VRT]

- Develop appropriate statistical tools to be used in development of opinion of value
- Explain and support their application

IX. Key Market Driving Influences [CBL, VT, VA, VRT]

- Determine most appropriate units of comparison (market drivers)

B. Identify market preferences for characteristics and amenities (e.g., parking, # beds, # baths, GLA)*Methods and Techniques*

- Complete exploratory data analysis and generate representative sample data to identify different unit price indicators by requiring candidate to analyze several options and select the option with the most robust statistical results [VT, VG, CBL]
- Express several types of simulated data with the candidate building models which generate the most accurate and reliable results [VT, VG, CBL]
- Incorporate in all exploratory data analysis exercises utilizing relevant descriptive statistics (e.g., median, mean, mode, standard deviation, coefficient of variation) [VT, VG, CBL]

X. Review Sections VI thru IX with Mentor

- A. Ensure key analytical issues related to market conditions and highest and best use are effectively addressed**
- B. Confirm appropriate items have been identified and analyzed for proper application in determination of opinion of value**

XI. Site Valuation and Cost Approaches**A. Site Valuation**

1. Extract comparable land/site sales data that will adequately support adjustments for contributing value of unique attributes associated with complex vacant sites (view, entitlements, amenities, surplus/excess land)

B. Develop a supportable Land/Site Valuation - using the following methods:

1. Allocation
2. Market extraction
3. Ground rent capitalization
4. Land residual method; and
5. Sales comparison

C. Construction Costs

1. Exercises related to high amenity structures
2. Discuss local cost influences

D. Functional Obsolescence

1. Distinguish between curable and incurable forms
2. Analyze and support conclusions on obsolescence, including lack thereof, associated with complex properties

Methods and Techniques

- Develop multiple samples that use each of the basic site valuation techniques [VT, VA, VG, CBL]
- Develop multiple samples that use multiple techniques to estimate cost new [VT, VA, VG, CBL]
- Develop multiple examples to estimate functional obsolescence [VT, VA, VG, CBL]
- Develop an indicated value of a complex property using the cost approach [VT, CBL]

XII. Review Section XI with Mentor

- A. Ensure the Cost Approach has been performed properly.**

XIII. Sales Comparison Approach**A. Sales Concessions**

1. Is the subject property subject to sales concessions?
2. Identify and discuss application (or not) of any sales concessions in comparable data based on market norms
3. Cash equivalency related to financing terms

B. Identifying and Applying Atypical Adjustments – develop support related to the following:

1. High amenity custom quality adjustments
2. Site adjustments
3. Adjustment support/matched pairs, statistical methods
4. Adjustment support for unique one-off property sales including those with Accessory Dwelling Units

Methods and Techniques

- *Develop multiple exercises requiring identification and determination of impact of sales concessions (e.g., assumption of closing costs, payments made outside of transaction) [VT, VA, VG, CBL]*
- *Develop multiple exercises using statistical techniques (e.g., paired sales analysis, regression analysis) to analyze simulated data and estimate adjustments [VT, VA, VG, CBL]*

XIV. Review Section XIII with Mentor

- A. Ensure the sales comparison approach has been performed properly.**

XV. Income Approach**A. 1-4 Unit Appraisals**

1. Perform collection of comparable rent data
2. Complex rental adjustments
 - a. Understand and apply impact of complex amenities
 - b. Factor for Expense allocations between comparable transactions

B. Unique multi-unit assignments – discuss the following:

1. Location premiums within PUD/condo
2. Impact of rent control or subsidies
3. Student housing
4. Seasonal and short-term rentals

C. GRM analysis

1. Non-market rent impact on GRM
2. Perform reconciliation of GRM indicators

Methods and Techniques

- *Provide exercises extracting expense information via market participant interviews (e.g., agents/brokers, property managers, prior property information) [VT, VG, CBL]*
- *Provide exercises identifying and analyzing unique property characteristics (e.g., view, physical characteristics, parking limitations, floor location) [VT, VG, CBL]*
- *Provide exercises identifying and analyzing non-market rent on GRM [VT, VG, CBL]*

XVI. Review Section XV with Mentor

- A. Review the Income approach to value and ensure proper analysis and support for conclusions**

XVII. Writing and Reasoning Skills**A. Data Presentation**

1. Develop presentation of data in tables, charts, and graphs as appropriate
2. Express succinct narrative using active voice, direct statements, shorter words, shorter paragraphs and placing the bottom-line up front
3. Underscore proper and understandable use of English
 - b. Have another proofread whenever possible

B. Discussion of Approaches to Value

1. Adjust depth of discussion to the intended user(s)

C. Support for Conclusions

1. Clearly state conclusions throughout the report. Each conclusion requires credible support and logical reconciliation

D. Summary of Data and Reconciliation of Value Approaches

1. Summarize the quantity, quality, reliability, and relevance of data available for application in each approach performed. The reconciliation and final value opinion must be consistent with the conclusions of this summary regarding the most germane approach to value

Methods and Techniques

- *Ensure accuracy and consistency of information throughout report [VT, VG, CBL]*
- *Provide various report samples that contain both adequate and inadequate communication [VT, VA]*
- *Provide opportunities to review and correct errors in reports [VT, VG, CBL]*
- *Provide opportunities to review and correct inappropriate assumptions, extraordinary assumptions and hypothetical conditions [VT, VG, CBL]*
- *Provide various samples of appropriate and inappropriate requests for corrections, clarifications and Reconsiderations of Value, demonstrating appropriate responses (e.g., no changes, modifications to report, requirement for new assignment, etc.) [VT, VG, CBL]*

XVIII. Review Section XVII with Mentor

- A. Ensure understanding of effective appraisal report presentation and required content**
- B. Ensure compliance with Standards Rule 2-2**

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32-3605. Deputy director; duties; powers; immunity

A. The deputy director shall adopt rules in aid or in furtherance of this chapter.

B. The deputy director shall:

1. Adopt standards for appraisal practice that is regulated by this chapter. The standards at a minimum shall be equivalent to the standards of professional appraisal practice.

2. In prescribing criteria for certification, adopt criteria that at a minimum are equal to the minimum criteria for certification adopted by the appraiser qualifications board.

3. In prescribing criteria for licensing and registration, adopt criteria that at a minimum are equal to the minimum criteria for licensing and registration adopted by the appraiser qualifications board.

4. Further define by rule with respect to state-licensed or state-certified appraisers appropriate and reasonable educational experience, appraisal experience and equivalent experience that meets the statutory requirement of this chapter.

5. Adopt the national examination as approved by the appraiser qualifications board for state-certified appraisers.

6. Adopt the national examination as approved by the appraiser qualifications board for state-licensed appraisers.

7. Establish administrative procedures for:

(a) Processing applications for licenses and certificates, including registration certificates.

(b) Approving or disapproving applications for registration, licensure and certification.

(c) Issuing licenses and certificates, including registration certificates.

8. Define by rule, with respect to registered trainee appraisers and state-licensed and state-certified appraisers, the continuing education requirements for the renewal of licenses or certificates that satisfy the statutory requirements provided in this chapter.

9. Periodically review the requirements for the development and communication of appraisals provided in this chapter and adopt rules explaining and interpreting the requirements.

10. Define and explain by rule each stage and step associated with the administrative procedures for the disciplinary process pursuant to this chapter, including:

(a) Prescribing minimum criteria for accepting a complaint against a registered trainee appraiser or a licensed or certified appraiser. The deputy director may not consider a complaint for administrative action if the complaint either:

(i) Relates to an appraisal that was completed more than five years before the complaint was submitted to the deputy director or more than two years after final disposition of any judicial proceeding in which the appraisal was an issue, whichever period of time is greater.

(ii) Is filed against a person who is a staff person of the department and the person is a licensed or certified appraiser and the complaint is against the person's license or certificate and relates to the person's performance of duties. This item applies to a contract investigator who is under contract with the department for the performance of an appraisal review as defined by the uniform standards of professional appraisal practice.

(b) Defining the process and procedures used in investigating the allegations of the complaint. The deputy director shall consolidate complaints that are filed within a six-month period of time if the complaints are against the same appraiser, relate to the same appraisal and property and are filed by an entity that is subject to the mandatory reporting provisions of the Dodd-Frank Wall Street reform and consumer protection act (P.L. 111-203; 124 Stat. 1376). Complaints that are consolidated pursuant to this subdivision must be considered and adjudicated as one complaint.

(c) Defining the process and procedures used in hearings on the complaint, including a description of the rights of the deputy director and any person who is alleged to have committed the violation.

(d) Establishing criteria to be used in determining the appropriate actions for violations.

11. Communicate information that is useful to the public and appraisers relating to actions for violations.

12. Issue decrees of censure, fix periods and terms of probation and suspend and revoke licenses and certificates pursuant to the disciplinary proceedings provided for in section 32-3631.

13. At least monthly transmit to the appraisal subcommittee a listing of all appraisal management companies that have received a state certificate of registration in accordance with this chapter.

14. Investigate and assess potential law or order violations and discipline, suspend, terminate or deny registration renewals of appraisal management companies that violate laws or orders. The deputy director shall report violations of appraisal-related laws or orders and disciplinary and enforcement actions to the appraisal subcommittee.

15. Transmit the national registry fee collected pursuant to section 32-3607 to the appraisal subcommittee.

16. Establish the fees in accordance with section 32-3607.

17. Receive applications for state licenses and certificates.

18. Maintain a registry of the names and addresses of persons who are registered, licensed or certified under this chapter.

19. Retain records and all application materials submitted to the deputy director.

20. Publish on the department's website a current list of supervisory appraisers and registered trainee appraisers.

21. Perform such other functions and duties as may be necessary to carry out this chapter.

C. The deputy director may accept and spend federal monies and grants, gifts, contributions and devises from any public or private source to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of the fiscal year.

D. The deputy director may impose civil penalties pursuant to section 32-3631.

32-3625. Continuing education

A. As a prerequisite to renewal of a license or certificate, a state registered trainee appraiser or a state-licensed or state-certified appraiser shall present evidence satisfactory to the deputy director of having met the continuing education requirements of either subsection B or C of this section.

B. The basic continuing education requirement for renewal of a license or certificate is the completion by the applicant, during the immediately preceding term of the license or certificate, of courses or seminars that are approved by the deputy director.

C. An applicant for reregistering, relicensing or recertification may satisfy all or part of the continuing education requirements by presenting evidence of the following, which shall be approved by the deputy director:

1. Completion of an education program of study determined by the deputy director to be equivalent, for continuing education purposes, to courses approved by the deputy director pursuant to subsection B of this section.

2. Participation other than as a student in educational processes and programs that are approved by the deputy director and that relate to appropriate appraisal theory, practices or techniques, including teaching, program development and preparation of textbooks, monographs, articles and other instructional materials, not to exceed fifty percent of an applicant's continuing education requirements and not for the same course in consecutive renewal periods.

D. The deputy director shall adopt rules to ensure that a person who renews the person's license or certificate as a state-licensed or state-certified appraiser follows practices and techniques that provide a high degree of service and protection to members of the public with whom the person deals in the professional relationship under the authority of the license or certificate. The rules shall include the following:

1. Policies and procedures for obtaining the deputy director's approval of courses and instruction pursuant to subsection B of this section.

2. Standards, policies and procedures to be applied by the deputy director in evaluating an applicant's claims of equivalency in accordance with subsection C of this section.

3. Standards, monitoring methods and systems for recording attendance to be employed by course sponsors as a prerequisite to the deputy director's approval of courses for credit.

E. In adopting rules pursuant to subsection D, paragraph 1 of this section, the deputy director shall consider courses of instruction, seminars and other appropriate appraisal educational courses or programs previously or hereafter developed by or under the auspices of professional appraisal organizations and used by those associations for purposes of designation or indicating compliance with the continuing education requirements of such organizations. A person who offers these courses may not discriminate in the opportunity to participate in these courses on the basis of membership or nonmembership in an appraisal organization.

F. An amendment or repeal of a rule adopted by the deputy director pursuant to this section may not deprive a state registered trainee appraiser or a state-licensed or state-certified appraiser of credit toward renewal of a license or certificate for any course of instruction that the applicant

either completed or enrolled in before the amendment or repeal of the rule that would have qualified for continuing education credit as the rule existed before the repeal or amendment.

G. A license or certificate as a registered trainee appraiser or a state-licensed or state-certified appraiser that has been suspended as a result of disciplinary action by the deputy director shall not be reinstated unless the applicant presents evidence of completion of the continuing education required by this chapter.

H. A license or certificate that has been revoked by the deputy director shall not be reinstated unless the applicant successfully completes the appropriate requirements of the appraisal qualifications board, including education and passage of the current national examination.

32-3631. Disciplinary proceedings; civil penalties

A. The rights of an applicant or holder under a license or certificate as a registered trainee appraiser or a state-licensed or state-certified appraiser may be revoked or suspended, or the holder of the license or certificate may otherwise be disciplined, including being placed on probation as prescribed by rule, in accordance with this chapter on any of the grounds set forth in this section. The deputy director may investigate the actions of a registered trainee appraiser or a state-licensed or state-certified appraiser in this state or in any other state and may revoke or suspend the rights of a license or certificate holder or otherwise discipline a registered trainee appraiser or a state-licensed or state-certified appraiser for any of the following acts or omissions:

1. Procuring or attempting to procure a license or certificate pursuant to this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or certificate or committing any form of fraud or misrepresentation.
2. Failing to meet the minimum qualifications established by this chapter.
3. Paying or offering to pay money or other considerations other than as provided by this chapter to any member or employee of the department to procure a license or certificate under this chapter.
4. Being convicted, including based on a plea of guilty, of a crime that is substantially related to the qualifications, functions and duties of a person developing appraisals and communicating appraisals to others, or being convicted of any felony or any crime involving moral turpitude.
5. Committing an act or omission involving dishonesty, fraud or misrepresentation with the intent to substantially benefit the license or certificate holder or another person or with the intent to substantially injure another person.
6. Violating any of the standards of the development or communication of appraisals as provided in this chapter.
7. Being negligent or incompetent as a state-licensed or state-certified appraiser in developing an appraisal, in preparing an appraisal report or in communicating an appraisal.
8. Wilfully disregarding or violating any provisions of this chapter or an order or rule of the deputy director for the administration and enforcement of this chapter.
9. Accepting an appraisal assignment if the employment itself is contingent on the appraiser reporting a predetermined estimate, analysis or opinion or if the fee to be paid is contingent on the opinion, conclusion or value reached or on the consequences resulting from the appraisal assignment.
10. Violating the confidential nature of any records to which the registered trainee appraiser or the state-licensed or state-certified appraiser gains access through employment or engagement as a registered trainee appraiser or an appraiser.

11. Having a final civil judgment entered against the person on grounds of fraud, misrepresentation or deceit in the making of any appraisal.

B. In a disciplinary proceeding based on a civil judgment, a registered trainee appraiser or state-licensed or state-certified appraiser may present matters in mitigation and extenuation.

C. The deputy director may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence necessary and relevant to an investigation or hearing.

D. The lapsing or suspension of a license or certificate by operation of law or by an order or decision of the deputy director or a court of law, or the voluntary surrender of a license or certificate by a license or certificate holder, shall not deprive the deputy director of jurisdiction to do either of the following within twenty-four months after the expiration of the license or certificate pursuant to section 32-3616:

1. Proceed with any investigation of or action or disciplinary proceeding against the license or certificate holder.

2. Render a decision suspending or revoking the license or certificate or denying the renewal or right of renewal of the license or certificate.

E. If the deputy director determines that a state-licensed or state-certified appraiser is in violation of this chapter, the deputy director may take disciplinary or remedial action and may impose a civil penalty not to exceed \$3,000 per complaint filed with the deputy director pursuant to this chapter. All civil penalties collected pursuant to this subsection shall be deposited in the department revolving fund established by section 6-135.

32-3680. Rulemaking authority

The deputy director shall adopt rules that are reasonably necessary to implement, administer and enforce this article, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with this article and rules requiring a surety bond to be posted with each application.

DEPARTMENT OF CHILD SAFETY

Title 21, Chapter 8, Article 1

Amend: R21-8-101, R21-8-102, R21-8-103, R21-8-106, R21-8-107, R21-8-111,
R21-8-112, R21-8-114

Renumber: R21-8-113, R21-8-114

New Section: R21-8-113



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 11, 2022

SUBJECT: DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 8, Article 1

Amend: R21-8-101, R21-8-102, R21-8-103, R21-8-106, R21-8-107,
R21-8-111, R21-8-112, R21-8-114

Renumber: R21-8-113, R21-8-114

New Section: R21-8-113

Summary:

This regular rulemaking from the Department of Child Safety (Department) seeks to amend eight (8) rules, renumber two (2) rules, and add one rule (1) in Title 21, Chapter 8, Article 1 related to life safety inspections for foster homes and child welfare agency facilities. Specifically, the rules in this Article pertain to the inspection of foster homes and child welfare agency facilities for sanitation, fire, and other actual and potential hazards. In 2019, through the process of completing a Five-Year-Review Report (5YRR) per A.R.S. § 41-1056, the Department identified rules that need to be updated and amended. The Department indicates the proposed amendments identified in this rulemaking add, amend and update the rules in order to make them more effective, consistent with other rules and statutes, and clear, concise, and understandable, consistent with the proposed course of action identified in the Department's last 5YRR for these rules, which was approved by the Council in May 2020.

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

The Department cites both general and specific authority for these rules.

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

This rulemaking does not establish a new fee or contain a fee increase.

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

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

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

The Department is authorized by Arizona Revised Statutes to license foster homes and child welfare agencies. The Department conducts inspections at the time of licensing (initial and renewal), relocation of or new licensed settings, and for significant new construction. The Department anticipates that the economic impact of these rules to be minimal and does not anticipate this rulemaking creating a significant increase in cost.

The Department indicates the benefits of this rulemaking include: increased effectiveness, clarity, removal of redundancies, a reduction in regulatory burden, and potentially expands the pool of providers, while continuing to ensure that licensees provide as safe a home as possible to children in out-of-home care.

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

The Department believes that the amendments to the existing rules are the least costly and intrusive while ensuring that licensees provide a safe possible home to children in and out of home care.

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

The Department indicates those who will bear the cost of the rulemaking are: family foster home licensing agencies, child welfare agencies, family foster care providers, and the Department. Beneficiaries include family foster home licensing agencies, child welfare agencies, family foster care providers, the Department, and children placed in out-of-home care.

The Department anticipates that they will bear costs associated with monitoring rule compliance. However, the Department does not plan to hire more staff for this rulemaking.

The Department does not foresee an increase in costs for small businesses, including foster home licensing agencies and child welfare agencies. Private persons and consumers who are directly affected by the rules benefit from clear information on what is needed to maintain compliance. The amendments made under R21-8-106 (Weapons and Firearms) have the potential of decreasing costs for foster parents or potential foster parents.

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

The Department indicates it made two technical changes to the final rules from the rules published with the Notice of Proposed Rulemaking. First, in R21-8-106(B)(2) the word "Section" is changed to "subsection":

The proposed rulemaking read as follows:

2. Obtain documentation that the jurisdiction requires them to have their weapon stored in an official law enforcement vehicle, if applicable, which would prevent them from meeting the provisions of **Section (A)**;

The final rulemaking reads as follows:

2. Obtain documentation that the jurisdiction requires them to have their weapon stored in an official law enforcement vehicle, if applicable, which would prevent them from meeting the provisions of **subsection (A)**;

The second technical change is found in R21-8-113(A)(3) where the word "section" was not capitalized in the proposed rulemaking and is now capitalized in the final rulemaking:

Council staff does not believe either change creates a “substantial difference” between the proposed rule contained in the Notice of Proposed Rulemaking and the rule contained in the Notice of Final Rulemaking before the Council for consideration pursuant to A.R.S. § 41-1025.

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

The Department indicates it did not receive any public comments related to this rulemaking.

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

Not applicable. The rules relate to inspections conducted at foster homes and child welfare agency facilities and do not require the issuance of a permit, license, or agency authorization.

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

The Department indicates that corresponding federal law includes 42 U.S.C. 671. The Department indicates the rules are not more stringent than corresponding federal law.

11. Conclusion

The Department seeks to amend eight (8) rules , renumber two (2) rules, and add one rule (1) in Title 21, Chapter 8, Article 1 related to life safety inspections for foster homes and child welfare agency facilities. This rulemaking seeks to implement some of the proposed changes identified in the Department's prior 5YRR for these rules, approved by the Council in May 2020. The Department indicates these proposed amendments will make the rules more effective, consistent with other rules and statutes, and clear, concise, and understandable.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



ARIZONA
DEPARTMENT
of CHILD SAFETY

Mike Faust, Director
Douglas A. Ducey, Governor

January 18, 2022

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Title 21, Chapter 8 Article 1 Notice of Final Rulemaking

Dear Ms. Sornsin:

The attached final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for your use in reviewing the rulemaking package:

A. Close of Record Date:

The rulemaking record closed on October 19, 2021, following the public comment period. This rulemaking package is being submitted within the 120 days allowed for Final Rulemaking. An oral proceeding was held on October 19, 2021 via option to call-in. No verbal or written comments were received at the oral proceedings or during the comment period.

B. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:

This rulemaking relates to a five-year-review report. GRRC approved the five-year-review report on March 3, 2020.

C. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee:

The rulemaking does not establish a new fee.

D. Whether the rule contains a fee increase:

The rulemaking does not contain a fee increase.

- E. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Department of Child Safety is not requesting an immediate effective date.
- 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 or justification for the rule:
The Department certifies that the preamble accurately discloses that a study was not conducted or relied on in the agency's evaluation or justification of the rule.
- 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 (JLBC) of the number of new full-time employees necessary to implement and enforce the rule:
The Department of Child Safety is not required to make a certification to JLBC because the rule does not require any new full-time employees.
- H. A list of all documents enclosed:
1. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text
 2. Economic, Small Business, and Consumer Impact Statement
 3. Copy of the authorizing and implementing statutes
 4. Copy of current rules
 5. Governor's Office Approval via email from the Policy Advisor. (Approval of the request of an exemption to the rulemaking moratorium and approval of the Notice of Final Rulemaking)

If you have any questions, please contact Angie Trevino, Rules Development and Policy Specialist at (602) 255-2569 or by email at angelica.trevino@azdcs.gov.

Sincerely,



Mike Faust
Director

Enclosure

NOTICE OF FINAL RULEMAKING
TITLE 21. CHILD SAFETY
CHAPTER 8. DEPARTMENT OF CHILD SAFETY - FOSTER HOME AND CHILD WELFARE
AGENCY FACILITY SAFETY

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R21-8-101	Amend
R21-8-102	Amend
R21-8-103	Amend
R21-8-106	Amend
R21-8-107	Amend
R21-8-111	Amend
R21-8-112	Amend
R21-8-113	Renumber
R21-8-113	New Section
R21-8-114	Renumber
R21-8-114	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. § 8-453(A)(5)
Implementing statute: A.R.S. §§ 8-504, 8-505, and 8-509

3. The effective date of the rule:

The rules will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Not applicable.

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

Not applicable.

4. 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: 27 A.A.R. 1391, September 3, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 1361, September 3, 2021

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

Name: Angie Trevino, Rule Development Specialist

Address: Department of Child Safety

3003 N. Central Avenue

Phoenix, AZ 85012

Telephone: (602) 255-2569

Fax: (602) 255-3262

E-mail: Angelica.Trevino@azdcs.gov

Web site: <https://dcs.az.gov/about/dcs-rules-rulemaking>

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 rules in this Article pertain to the inspection of foster homes and child welfare agencies for sanitation, fire, and other actual and potential hazards. In 2019, through the process of completing a Five-Year-Review Report per A.R.S. § 41-1056, the Department identified rules that need to be updated and amended. The proposed amendments identified in this rulemaking add, amend and update the rules in order to make them more effective, consistent with other rules and statutes, and clear, concise, and understandable.

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 Department of Child Safety (DCS) 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 Department of Child Safety is authorized by Arizona Revised Statutes to license foster homes and child welfare agencies. A component of licensing is the inspection of foster homes and the facilities under a child welfare agency. The Department conducts inspections at the time of licensing (initial and renewal), relocation of or new licensed settings, and for significant new construction. The Department anticipates that the economic impact of these rules to be minimal and does not anticipate that this rulemaking creates a significant increase in cost. In 2021 the 55th Legislature passed HB2399 requiring the Department to charge a licensing fee to residential group care facilities such as the Office of Refugee Resettlement program. While the life safety inspections is a criteria in the process of licensing, the fees will be addressed in a separate rulemaking under a different Chapter. The amendments to the rules in this package do not relate to the charge of fees. The benefits of this rulemaking include increased clarity, removal of redundancies, reduction in a regulatory burden, clarifies expectations, and potentially expands the pool of providers, while continuing to ensure that licensees provide as safe a home as possible to children in out-of-home care.

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

There are two (2) technical changes between the proposed rulemaking and the final rulemaking. The first technical change is found in R21-8-106 (B)(2) where "Section" is changed to "subsection":

It read in the proposed rulemaking as follows:

2. Obtain documentation that the jurisdiction requires them to have their weapon stored in an official law enforcement vehicle, if applicable, which would prevent them from meeting the provisions of Section (A);

Changed in the final rulemaking as follows:

2. Obtain documentation that the jurisdiction requires them to have their weapon stored in an official law enforcement vehicle, if applicable, which would prevent them from meeting the provisions of subsection (A);

The second technical change is found in R21-8-113 (A)(3) where the word "section" was not capitalized in the proposed rulemaking and is now capitalized in the final rulemaking:

3. An evacuation plan for the home, as detailed in this Section; and

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

No comments were received regarding this rulemaking. The record closed at 5:00 PM on October 19, 2021.

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 pertain to the inspections of foster homes and child welfare agencies. 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:

Federal laws 42 U.S.C. 671. The rules are 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 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:

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:

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

15. The full text of the rules follows:

Title 21. CHILD SAFETY

CHAPTER 8. DEPARTMENT OF CHILD SAFETY - FOSTER HOME AND CHILD WELFARE

AGENCY FACILITY SAFETY

ARTICLE 1. LIFE SAFETY INSPECTIONS

Section

- R21-8-101. Definitions
- R21-8-102. Application
- R21-8-103. Frequency of Inspection and Inspection Area
- R21-8-106. Weapons and Firearms
- R21-8-107. Animals
- R21-8-111. Water and Plumbing Requirements
- R21-8-112. Fire Safety ~~and Evacuation Plan Requirements~~
- R21-8-113. Emergency and Disaster Plan
- ~~R21-8-113~~R21-8-114. Pool Safety

ARTICLE 1. LIFE SAFETY INSPECTIONS

R21-8-101. Definitions

The definitions in R21-6-101 apply to this Article, except the following terms are defined as:

1. No change
2. No change
3. No change
 - a. No change
 - b. No change
 - c. No change
4. “Pool enclosure” means a fence or barrier surrounding a pool and meets the requirements of ~~R21-8-113(B)(2)~~ R21-8-114(B)(2).
5. No change
 - a. No change
 - b. No change
6. No change
7. “Structural modification” means:
 - a. Adding or removing walls, windows or doors; or
 - b. Converting a garage, attic, basement, or other similar space into a bedroom.

R21-8-102. Application

This Article applies to:

1. No change
2. A Child Welfare Agency operating a residential group care facility ~~or shelter care facility regulated under A.A.C. Title 6, Chapter 5, Article 74, but not a Child Welfare Agency operating an outdoor experience program.~~ licensed by the Department of Child Safety.

R21-8-103. Frequency of Inspection and Inspection Area

- A. Each provider shall have a Life Safety Inspection of the premises- completed by OLR.
- B. OLR shall ~~inspect the premises~~ conduct an inspection to verify compliance with Life Safety
Inspection rules:
 1. ~~At initial licensure;~~
 2. ~~Every two years; and~~
 3. ~~Within three months prior to the renewal date of a license.~~

1. Before an initial license is issued;
2. Before an amended license is issued for a new location;
3. Before an amended license is issued for structural modifications;
4. Before an amended license is issued for an addition of a pool; and
5. Before a renewal license is issued.

C. The Life Safety Inspection shall include all rooms and dwellings on the premises ~~in which a foster or child in a Child Welfare Agency residential group care facility resides or may have access to,~~ including ~~sheds, mobile homes; and trailers, and cottages.~~

R21-8-106. Weapons and Firearms

A. The provider shall meet the following standards concerning weapons:

1. The provider shall store the following weapons in an inoperable condition in a locked area inaccessible to children:
 - ~~a.~~ ~~Firearms;~~
 - ~~b.~~a. Air guns, including BB guns;
 - ~~e.~~b. Bows and cross-bows;
 - ~~d.~~c. Stun guns;
 - ~~e.~~d. Hunting slingshots;
 - ~~f.~~e. Any other projectile weapon; and
 - ~~g.~~f. Hunting knives.
2. ~~Firearms, ammunition, and other weapons, including cross-bows, stun guns, air guns, and hunting knives~~ are safeguarded to prevent unsafe or improper use. In addition:
 - a. Firearms are unloaded, ~~trigger locked,~~ and kept in a tamper-proof, locked storage container made of unbreakable material; and
 - b. Ammunition is maintained in locked storage ~~that is separate from firearms.~~ Locked storage may be in the same container as the firearms.

B. OLR may approve a provider who is a foster parent applicant or foster parent who is also a law enforcement official, to ~~carry a firearm when the provider:~~ maintain an assigned duty weapon when they:

1. ~~Obtains~~ Obtain documentation that the jurisdiction requires ~~him or her~~ them to have ready and immediate access to the weapons at all times;
2. ~~Supplies official documentation that he or she has been trained in the law enforcement protocols for the safe use and carrying of a firearm;~~

- ~~3. Adopts and follows a safety plan approved by OLR and the licensing agency; and~~
- ~~4. Stores the weapon according to the provisions of this Section when the weapon is not on their person;~~
2. Obtain documentation that the jurisdiction requires them to have their weapon stored in an official law enforcement vehicle, if applicable, which would prevent them from meeting the provisions of subsection (A);
3. Provide official documentation that they have been trained in the law enforcement protocols for the safe use and carrying of a firearm;
4. Maintain the weapon according to the provisions of this Section when the weapon is not on their person;
5. Develop a safety plan with the guidance of the licensing agency; and
6. Obtain approval from OLR.

C. No change

R21-8-107. Animals

The ~~home~~ premises shall meet the following standards concerning animals:

1. No change
2. No change
3. No change
4. All dogs older than six months have current rabies vaccination or are otherwise in compliance with A.R.S. § 11-1010. ~~Vaccination records are maintained in the home.~~
5. Vaccination shall be administered by a veterinarian.
6. Vaccination records shall be maintained in the home.

R21-8-111. Water and Plumbing Requirements

A. No change

B. ~~The home must meet the following standards concerning water~~ provider shall obtain a written water analysis report if the home uses a non-municipal water source that shall meet the following standards:

- ~~1. If a home uses a non-municipal water source including private well water or another source of drinking water, the provider shall have the water tested for safety under subsection (B)(2).~~
- ~~2. If the home's water is from any source other than an approved public water supply, the foster parent shall obtain a written water analysis report, showing that the water is within acceptable state and federal standards for drinking water for the age of the children in care. The provider~~

~~shall obtain the analysis and report from a laboratory certified by the Arizona Department of Health Services as part of the initial licensing process and before each renewal.~~

- ~~1. The analysis report shall be from a laboratory certified by the Arizona Department of Health Services;~~
- ~~2. The analysis report shall be completed no more than 12 months prior to the date of the Life Safety Inspection completed by OLR;~~
- ~~3. The analysis report shall be available in the home at all times and presented at the time of inspection; and~~
- ~~4. If the analysis report details contaminants are found to exceed acceptable state and federal standards for drinking water the provider shall prepare a plan with the guidance of the licensing agency or OLR to include:
 - ~~a. How the provider will ensure safe drinking water will be available in the home;~~
 - ~~b. Efforts to reduce identified contaminants to meet state and federal standards for drinking water; and~~
 - ~~c. Approval by OLR.~~~~

C. No change

D. No change

R21-8-112. Fire Safety ~~and Evacuation Plan Requirements~~

The provider shall ensure:

1. No change
2. No change
3. No change
4. No change
5. No change
 - a. No change
 - b. No change
 - c. No change
- ~~6. A written emergency evacuation plan is developed and maintained in the home, to provide guidance on the safe and rapid evacuation of the home. An emergency evacuation plan shall:
 - ~~a. Be reviewed with the child within 72 hours of placement in the home and posted in a prominent place in the home;~~
 - ~~b. Identify multiple exits from the home;~~~~

- ~~e. Identify two routes of evacuation from each bedroom on every floor used by individuals residing in or receiving care in the home. At least one of the exit routes for these bedrooms shall lead directly to the outside of the home. If that exit leads into an area that serves as a pool enclosure, a child six years of age or less receiving care in the home shall not reside in that bedroom.~~
 - ~~i. If the exit is a window, it shall be secured with a latching device located a minimum of 54 inches above the floor; or~~
 - ~~ii. If the exit is a door, it shall be locked at all times with a latching device or lock located a minimum of 54 inches above the floor. If there is no quick release mechanism on the lock, it must comply with the provisions of R21-8-112(11), and a key for the deadbolt shall be located a minimum of 54 inches above the floor. Bedroom doors that lead into an area that serves as a pool enclosure shall comply with this Section and also be self-closing and self-latching. Such doors that are hinged shall also swing outward from the pool area.~~
 - ~~d. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders, and emergency lighting, as applicable;~~
 - ~~e. Designate a safe central meeting place close to the home, known to the child, at a safe distance from potential danger;~~
 - ~~f. Be maintained in the home to review with individuals residing in or receiving care in the home; and~~
 - ~~g. Include the placement of equipment, such as a ladder, that can be safely used by the individuals residing in each upstairs bedroom that have been identified with fire exits.~~
- ~~7. All windows identified as fire exits, must have enough space for an adult to move through.~~
- ~~8. Each bedroom used by a foster child or child in a residential group care facility receiving care or services has two exits to the outside.~~
 - ~~a. One exit shall be a path through the premises and leading to a door that opens to the outside. A garage door that opens either manually by lifting or with an automatic opener shall not be accepted as an exit.~~
 - ~~b. Another exit shall be a window or door within the bedroom that opens directly to the outside.~~
- ~~9. Premises authorized to provide care or services to five or more children shall train staff and children in evacuation procedures and conduct emergency drills at least every three months as prescribed in this subsection.~~

- ~~a. Practice drills shall include actual evacuation of children to safe areas, outside, and beyond the home.~~
- ~~b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.~~
- ~~e. All persons in the home shall participate in the drill.~~
- ~~d. Records shall be maintained for each emergency drill and shall include:

 - ~~i. Date and time of drill;~~
 - ~~ii. Total evacuation time;~~
 - ~~iii. Exits used;~~
 - ~~iv. Problems noted; and~~
 - ~~v. Measures taken to ensure that a foster child or a child in a residential group home facility understand the purpose of a drill and his or her responsibilities during a drill.~~~~

~~10.6.~~ The exit routes for the home are clear of obstruction that could prevent safe and rapid evacuation.

~~11.7.~~ The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department may grant an exception to this requirement for a double-key deadbolt on a door if:

- a. There is breakable glass within 40 inches of the interior locking mechanism;
- b. There is another exit with a quick release mechanism on the same level of the premises; and
- c. The key for the deadbolt is permanently maintained in a location that is:
 - i. Within six feet of the locking mechanism;
 - ii. Accessible to all household members;
 - iii. Reviewed with persons residing in or receiving care in the home; and
 - iv. Identified on the emergency evacuation plan, ~~specified in subsection (6).~~

~~12.8.~~ The address for the home is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the home in writing, with a copy of this notification maintained in the home.

~~13.~~ Providers must maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home.

R21-8-113. Emergency and Disaster Plan

A. A provider shall develop and maintain in the home a written emergency and disaster plan on a form provided by the Department that includes:

1. Contact information for each foster child, including the name and telephone number of the primary care physician and legal guardian;
2. A comprehensive list of emergency telephone numbers;
3. An evacuation plan for the home, as detailed in this Section; and
4. A plan for relocation from the home in the event of displacement due to flood, fire, the breakdown of essential appliances, or other disasters.

B. A provider shall ensure:

1. A written emergency evacuation plan is developed and maintained in the home, to provide guidance on the safe and rapid evacuation of the home. An emergency evacuation plan shall:
 - a. Be reviewed with the child within 72 hours of placement in the home and posted in a prominent place in the home;
 - b. Identify multiple exits from the home;
 - c. Identify two routes of evacuation from each bedroom on every floor used by individuals residing in or receiving care in the home. At least one of the exit routes for these bedrooms shall lead directly to the outside of the home. If that exit leads into an area that serves as a pool enclosure, a child six years of age or less receiving care in the home shall not reside in that bedroom.
 - i. If the exit is a window, it shall be secured with a latching device located a minimum of 54 inches above the floor; or
 - ii. If the exit is a door, it shall be locked at all times with a latching device or lock located a minimum of 54 inches above the floor. If there is no quick release mechanism on the lock, it must comply with the provisions of R21-8-112(7), and a key for the deadbolt shall be located a minimum of 54 inches above the floor. Bedroom doors that lead into an area that serves as a pool enclosure shall comply with this Section and also be self-closing and self-latching. Such doors that are hinged shall also swing outward from the pool area.
 - d. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders, and emergency lighting, as applicable;
 - e. Designate a safe central meeting place close to the home, known to the child, at a safe distance from potential danger;
 - f. Be maintained in the home to review with individuals residing in or receiving care in the home; and

B. ~~For a home that has a pool, and provides care to a child six years of age or less, or an individual with a Developmental Disability, If a provider listed in subsection (A) has a pool~~ the provider shall ensure the following:

1. That the pool complies with A.R.S. § 36-1681 and all local municipal codes to the extent not inconsistent with this Section.

2. A fence or barrier meeting the following requirements is maintained between the pool and the home, or any building used to provide care and supervision.

a. The exterior side of the fence or barrier is at least five feet high;

b. All openings shall measure less than four inches;

~~b.c.~~ If the barrier is a chain link fence or lattice, each opening in the mesh measures less than 1 3/4 inches horizontally. Chicken wire and other light gauge wire are prohibited as a primary fencing material for the pool;

~~e. If the barrier is a fence constructed of vertical bars or wooden slats, the openings between bars or slats measure less than four inches;~~

d. The exterior side of the barrier is free of hand holds, or foot holds, or other means that could be used to climb over it and if it has a horizontal component spaced at least 45 inches, measured vertically;

e. The gate to the enclosure is locked, except when in use and there is an adult within the enclosure to supervise the pool and spa area;

f. The connection between the panels of the fence cannot be separated without a key or a tool;

g. The fence is secured to the ground or has sufficient tension to prevent the fence from being lifted more than four inches from the ground;

h. If the home or building to provide care or supervision constitutes part of the enclosure:

i. The enclosure does not interfere with safe egress from the home;

ii. A door from the home does not open within the pool enclosure, unless it is a bedroom door in a bedroom not occupied by an individual six years of age or less receiving care and such a door cannot be opened by a foster child six years of age or less or child in a residential group care facility because it is either locked as required in ~~R21-8-112(6)(c)(ii)~~ R21-8-113(B)(1)(c)(ii) or inoperable. Any key shall not be accessible to a foster child six years of age or less or child in a residential group care facility;

iii. A window located in a room that is designated as a bedroom for a foster child six years of age or less or child in a residential group care facility shall not open into the pool enclosure or shall be permanently locked and not used for egress; and

- iv. Other windows that open into the pool enclosure are permanently secured to open no more than four inches; or as required in ~~R21-8-112(6)(c)(i)~~ R21-8-113(B(1)(c)(i)).
 - v. Animal or doggie doors shall not open directly into the pool enclosure.
- 3. No change
 - a. No change
 - b. No change
 - 4. No change
 - 5. No change
 - 6. No change
- C.** No change
- D.** No change
- E.** No change
- 1. No change
 - 2. No change
- F.** No change



ARIZONA DEPARTMENT OF CHILD SAFETY

**21 A.A.C. 8 Department of Child Safety – Foster Home and Child Welfare
Agency Facility Safety**

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

December 2021

1. Identification of the rulemaking

The Department adopted foster home and child welfare agency facility safety rules under its own title (Title 21. Child Safety) implementing A.R.S. §§ 8-504, 8-505, and 8-509.

The Department is authorized by Arizona Revised Statutes to license foster home and child welfare agencies. The purpose of regulating DCS foster homes and child welfare agencies is to protect vulnerable children receiving services through the establishment and enforcement of safe standards for care. A.R.S. § 8-504 requires the Department to inspect child welfare agencies and foster homes for sanitation, fire, and other actual and potential hazards. A component of licensing is the inspection of foster homes and the facilities under a child welfare agency which are used for the provision of services. The Department schedules and conducts these inspections. In addition to inspections conducted as part of the initial licensing process, the Arizona Administrative Code also requires periodic inspections of the foster home and child welfare agency for renewal licensure, relocation of licensed settings, and for significant new construction. Inspections directly impact the health and well-being of vulnerable children. The inspection is only one requirement for obtaining a license. The additional requirements are detailed in separate rules.

The proposed amended rules pertain to amendments identified in the Five-Year-Review Report approved by GRRC on March 3, 2020 and other amendments later identified to make the rules more effective, clearer, concise, and understandable.

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

The Department of Child Safety is authorized by Arizona Revised Statutes to license foster homes and child welfare agencies. A component of licensing is the inspection of foster homes and the facilities under a child welfare agency. The Department conducts inspections at the time of licensing (initial and renewal), relocation of or new licensed settings, and for significant new construction. The Department anticipates that the economic impact of these

rules to be minimal and does not anticipate that this rulemaking creates a significant increase in cost. In 2021 the 55th Legislature passed HB2399 requiring the Department to charge a licensing fee to residential group care facilities such as the Office of Refugee Resettlement program. While the life safety inspections is a criteria in the process of licensing, the fees will be addressed in a separate rulemaking under a different Chapter. The amendments to the rules in this package do not relate to the charge of fees. The benefits of this rulemaking include increased effectiveness, clarity, removal of redundancies, a reduction in regulatory burden, clarifies expectations, and potentially expands the pool of providers, while continuing to ensure that licensees provide as safe a home as possible to children in out-of-home care.

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: Angie Trevino, Rules Development Specialist

Address: Department of Child Safety
3003 N. Central Avenue
Phoenix, AZ 85012

Telephone: 602-255-2569

Fax: 602-255-3262

Email: Angelica.Trevino@azdcs.gov

Web site: www.dcs.az.gov

4. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules.

a. Cost bearers

- Family foster home licensing agencies
- Child Welfare Agencies (Residential group care facilities, shelters, and child placing agencies)
- Family foster care providers (foster homes)

- Department of Child Safety (DCS)

b. Beneficiaries

- Family foster home licensing agencies
- Child Welfare Agencies (Residential group care facilities, shelters, and child placing agencies)
- Family Foster care providers
- Department of Child Safety (DCS)
- Children placed in out-of-home care

5. Cost/Benefit Analysis

The cost bearers and beneficiaries are as previously listed under #4. The Office of Licensing and Regulation (OLR) is a program unit within the Department of Child Safety charged with the responsibilities that pertain to Title 21, Chapter 8.

Family Foster Home Licensing Agencies

Family Foster Home Licensing Agencies are private organizations generally contracted with the Department of Child Safety to oversee the licensing of foster care providers. The agencies, as contractors, are expected to ensure the foster care provider complies with the rules in Title 21, Chapter 8 in between inspections conducted by the Department of the foster homes and to verify foster care providers correct deficiencies the Department identified. The Department has contracted 24 Foster Home Licensing Agencies to manage the licensing process for Arizona's 3,170 (as of November 18, 2021) licensed foster care providers.

During routine visits if a deficiency is noted, the agency will inform the foster care provider, affording the foster care provider an opportunity to correct the deficiency. If the foster care provider has multiple deficiencies or if the deficiency is a safety issue such as a weapons or pool violation, the agency will ask OLR to conduct the re-inspection. In calendar year 2020, DCS completed 110 re-inspections.

When an agency conducts a visit or a re-inspection, the agency must enter the information in the OLR case management system (Quick Connect). This allows OLR to view the documentation entered by the Family Foster Home Licensing Agency. Family Foster Home Licensing Agencies completed 1,182 re-inspections between January 1, 2020 and December 30, 2020.

The same opportunity costs experienced by the OLR apply to the Foster Home Licensing Agencies. However, because the Foster Home Licensing Agencies are businesses, re-inspections represent real costs. The more work a Foster Home Licensing Agency devotes to a foster care provider, the higher the unit cost of service delivery. Thus, re-inspections increases the expenses of the business.

The proposed rules will provide clearer expectations which in turn permit the Family Foster Home Licensing Agencies to communicate expectations to family foster homes. It is the hope that clearer rules will decrease the number of re-inspections and thus decreasing the burden on licensing agencies.

The Department spent \$21.5M in BFY21 contracts with Family Foster Home Licensing Agencies. This includes the cost to license Family Foster Homes (\$4.6M, including OLR operation costs) and the cost of filled beds licensing fees (\$16.9M).

Child Welfare Agencies and Foster Care Providers

Child welfare agencies are licensed by the Department to provide residential group care and emergency shelter care in out-of-home care. Child welfare agencies generally contract with the Department. As of November 19, 2021, 91 child welfare agencies maintain active licenses. Of the 91 active licenses, 86 have a contract with the Department of Child Safety. The Department spent \$93.4M in BFY21 in contracts with Child Welfare Agencies, which represents the cost of residential group homes.

Foster care providers (foster homes) are licensed by the Department to provide foster care, generally in a family setting. Foster care providers receive a set reimbursement per child. Currently, 3,170 licensed foster care providers maintain active licenses. The Department spent \$53.4M in BFY21 on reimbursements for the cost of caring for children by foster care providers of which \$47.1M is daily rate cost and \$6.3M for special allowances (daily and clothing allowances).

Both child welfare agencies and foster care providers must comply with 21 A.A.C. 8.

Expenditures for the Department of Child Safety

The responsibility of monitoring compliance with the rules in this rulemaking fall under the Office of Licensing and Regulation (OLR), a unit within the Department of Child Safety. DCS OLR consists of the Program Administrator, Policy Specialist, Management Analyst and eight (8) specialized units:

- Two Foster Home Group Home Investigations Units consisting of fourteen (14) full time employees (total for both units): two (2) Supervisors, one (1) Administrative Assistant and eleven (11) Investigators.
- Background Check Unit consists of seven (7) full time employees and four (4) contracted employees: one (1) Supervisor/Quick Connect (database) Project Coordinator, one (1) Administrative Assistant, five (5) Program Service Evaluators and four (4) contracted Program Service Evaluators.
- Foster and Adoption Supports Unit consist of nine (9) full time employees: one (1) Manager, four (4) Adoption Recruiters, two (2) Foster Support Specialists and two (2) Warmline and Inquiries Specialists. The manager in this unit also serves as the Manager for the Foster Home Licensing Unit.

- Foster Home Licensing Unit consists of eleven (11) full time employees, plus the one (1) Manager counted in the bullet above: one (1) Supervisor, three (3) Team Leads and seven (7) Licensing Specialists.
- Two Child Welfare Licensing Units that consist of nineteen (19) full time employee for both units: two (2) Managers, three (3) Team Leads, twelve (12) Licensing Specialists, and two (2) Licensing Coordinator. One of the managers also serves as the Manager for the Life Safety Inspection Unit.
- Life Safety Inspection Unit consists of six (6) full-time employees, plus the one (1) Manager counted in the bullet above: one (1) Scheduler, and five (5) Life Safety Inspectors.

DCS the Office of Licensing and Regulation completed 3,548 life safety inspections between January 1, 2020 and December 30, 2020. This number includes initial inspections, inspections completed at the renewal of a license, re-inspections, relocations, consultations, and new construction including pools.

The cost of the rules to the Department are associated to the monitoring compliance with the rules. The Department does not plan to hire more staff to address the volume of required life safety inspections, or any re-inspections.

Functions pertaining to DCS OLR Life Safety Inspection Unit

DCS OLR consists of the Program Administrator, Policy Specialist, Management Analyst, and eight (8) specialized units as detailed just above. The Life Safety Inspection Unit, which enforces and monitors the rules in Chapter 8 consists of seven (7) full-time employees: one (1) Manager, one (1) Scheduler, and five (5) Life Safety Inspectors. This unit is responsible for the following functions:

- Schedules initial, renewal, amendment, and new construction Life-Safety Inspections for foster homes

- Schedules initial, renewal, amendment, and new construction Life Safety Inspections for residential group care facilities
- Provides technical assistance to foster parents, foster home licensing agencies, and residential group care facilities
- Provides trainings to foster home licensing agencies at least once per quarter
- Provides consultations upon request
- Conducts Life-Safety inspections of foster homes and residential group care facilities
- Schedules and conducts follow up inspections of foster homes and residential group care facilities, as needed
- Works with foster home licensing agencies, foster homes, and residential group care facilities when deficiencies are discovered

Funding

The following funding information applies to OLR as a whole and is not specific to the functions those performed as a result of licensing per the rules in Chapter 8. In BFY21, DCS budgeted \$4.25M to OLR operations. This included 51 FTE, supplies, fingerprinting, overhead, etc. Due to some reorganization within the Department, OLR has acquired ten (10) additional FTEs, which were already budgeted within the Department's budget fiscal year. Furthermore, in 2021 the 55th Legislature passed HB2399 making the Department responsible for all aspects of licensing the Office of Refugee Resettlement program. As such, the Department gained eight (8) new FTEs positions to assist in the implementation. Information in relation to HB2399 is entered here for context as the implications will be addressed in separate rulemaking in a different Chapter. These changes in OLR's FTEs are included in the list above. The funding source is both state General Fund and Federal funds.

The Department believes that the operation of the Office of Licensing and Regulation imposes the least cost and burden to the regulated public and the general public, while safeguarding the interests of the protected public.

6. 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.

There is no known direct impact on private and public employment in businesses and political subdivisions of this state directly affected by these rules.

7. A statement of the probable impact of the rules on small business.

7.1. Identification of the small businesses subject to the rules.

Small businesses subject to the rules may include foster home licensing agencies and child welfare agencies.

7.2. The administrative and other costs required for compliance with the rules.

DCS OLR does not foresee an increase in costs required for compliance with the rules.

7.3. A description of the methods that the agency may use to reduce the impact on small businesses.

DCS OLR allows a provider to correct a deficiency on the spot if they can, eliminating the need for OLR or an agency to follow up. OLR has also created two (2) guides that provides guidance on how providers can accomplish compliance with these rules. Additionally, OLR is available for consultation as needed.

7.4. The probable costs and benefits to private persons and consumers who are directly affected by the rules.

The benefits to private persons and consumers who are directly affected by the rules includes providing them with clear information on what is required of them for maintaining compliance with this Chapter. The rules support that statutory requirement of DCS visiting providers to inspect for "sanitation, fire and other actual and potential hazards" (A.R.S. 8-504). Additional benefits of clear information on what is required include a shorter initial licensing timeframe by decreasing the amount of agency and OLR re-inspections. The amendments made under R21-8-106 (Weapons and Firearms) has the potential of decreasing costs for foster parents or potential foster parents.

8. A statement of the probable effect on state revenues.

The Department does not know of any direct or indirect effect of the rulemaking on state revenues.

9. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

DCS believes that the amendments to the existing rules are the least costly and intrusive while ensuring that licensees provide as safe as possible home to children in out of home care.

10. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

Not applicable

TITLE 21. CHILD SAFETY

CHAPTER 8. DEPARTMENT OF CHILD SAFETY - FOSTER HOME AND CHILD WELFARE AGENCY FACILITY SAFETY

Editor's Note: Chapter 8 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. LIFE SAFETY INSPECTIONS

Article 1, consisting of Sections R21-8-101 through R21-8-113, made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

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EMERGENCY RULEMAKING

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ARTICLE 1. LIFE SAFETY INSPECTIONS**R21-8-101. Definitions**

The definitions in R21-6-101 apply to this Article, except the following terms are defined as:

1. "Animal or doggie door" means a small portal in a wall, window, or human door to allow pets to enter and exit a house on their own without a person to open the door.
2. "Home" means a foster home or Child Welfare Agency residential group care facility where the provider is licensed to provide care to a foster or privately placed child in a residential group care facility.
3. "Pool" means any natural or man-made body of water located at a home or on its premises that:
 - a. Could be used for swimming, recreational, therapeutic, or decorative purposes;
 - b. Is greater than 18 inches in depth; and
 - c. Includes swimming pools, spas, hot tubs, fountains, and fishponds.
4. "Pool enclosure" means a fence or barrier surrounding a pool and meets the requirements of R21-8-113(B)(2).
5. "Premises" means:
 - a. The home; and
 - b. The property surrounding the home that is owned, leased, or controlled by the provider.
6. "Provider" means a licensed foster parent or Child Welfare Agency residential group care facility, and applicants for these licenses.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).
Amended by final rulemaking at 23 A.A.R. 3548, effective December 12, 2017 (Supp. 17-4).

R21-8-102. Application

This Article applies to:

1. All foster homes regulated under A.A.C. Title 21, Chapter 6; and
2. A Child Welfare Agency operating a residential group care facility or shelter care facility regulated under A.A.C. Title 6, Chapter 5, Article 74, but not a Child Welfare Agency operating an outdoor experience program.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-103. Frequency of Inspection and Inspection Area

- A. Each provider shall have a Life Safety Inspection of the premises.
- B. OLR shall inspect the premises:
 1. At initial licensure;
 2. Every two years; and
 3. Within three months prior to the renewal date of a license.
- C. The Life Safety Inspection shall include all rooms and dwellings on the premises in which a foster or child in a Child Welfare Agency residential group care facility resides or may have access to, including sheds, mobile homes, trailers, and cottages.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-104. General Condition and Cleanliness of the Premises

The provider shall ensure:

1. The interior is clean, sanitary, and disinfected to prevent, minimize, and control illness, infection, or injury.
2. The premises is maintained in good repair and does not constitute a hazard. Damage that constitutes a hazard includes:
 - a. Broken glass;
 - b. Surfaces that are rusted, have sharp or jagged edges, or have nails protruding;
 - c. Holes in walls, ceilings, or floors; or
 - d. Broken furniture, fixtures, appliances, or equipment.
3. Play areas and therapy equipment are stable, in good repair, and do not constitute a hazard.
4. Swing sets are securely anchored to the ground.
5. The premises are clean to the degree that the condition does not constitute a hazard. Conditions that constitute a hazard include:
 - a. Rotting food,
 - b. Stale or accumulated urine or feces, or
 - c. An accumulation of mold.
6. Garbage is removed from the premises at least once each week.
7. The premises and outside play areas are free of insect and rodent infestation, or the premises have an effective ongoing system to eliminate insects or rodents.
8. Water in a pool on the premises is maintained, is not stagnant, and is clear enough to see through the water to the bottom surface of the pool.
9. Excessive weeds and brush that pose a fire hazard are trimmed or removed.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-105. Safeguarding of Hazards

A. The provider shall ensure:

1. Highly toxic substances and materials are safeguarded in locked storage. Highly toxic substances include gasoline, lighter fluid, pesticides, radiator fluid, drain cleaner, ammonia, bleach, spray paint, turpentine, and other substances that can cause serious bodily harm or death if improperly used.
2. Household cleaning supplies are safeguarded to prevent unsafe or improper use. Household cleaning supplies are substances that are not intended for ingestion, but generally will not cause serious bodily harm or death if improperly used. Examples of household cleaning supplies include spray cleaners, laundry detergent, furniture polish, and dishwasher detergent.
3. Access to personal grooming supplies is not restricted unless the case plan or service plan for a foster child or child in a residential group care facility specifically restricts such access. Personal grooming supplies include toothpaste, hand-soap, shampoo, menstrual products, and deodorant.
4. Ramps, bathtubs, and showers have slip-resistant surfaces.
5. Handrails and grab-bars are securely attached and stationary.
6. Skirting is intact around the base of the setting, if the setting is a mobile home.
7. The child's access is prevented as appropriate, for his or her age and development, from all medications, poisonous materials, cleaning supplies, other hazardous materials, and alcoholic beverages.
8. That the home maintains first aid supplies.

Department of Child Safety - Foster Home and Child Welfare Agency Facility Safety

- B. OLR may require removal, repair, or safeguarding of physical and other hazards that are determined to be unsafe for a foster child or child in a residential group care facility, including a drained swimming pool and trampoline.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-106. Weapons and Firearms

- A. The provider shall meet the following standards concerning weapons:
1. The provider shall store the following weapons in an inoperable condition in a locked area inaccessible to children:
 - a. Firearms;
 - b. Air guns, including BB guns;
 - c. Bows and cross-bows;
 - d. Stun guns;
 - e. Hunting slingshots;
 - f. Any other projectile weapon; and
 - g. Hunting knives.
 2. Firearms, ammunition, and other weapons, including cross-bows, stun guns, air guns, and hunting knives are safeguarded to prevent unsafe or improper use. In addition:
 - a. Firearms are unloaded, trigger locked, and kept in a tamper-proof, locked storage container made of unbreakable material; and
 - b. Ammunition is maintained in locked storage that is separate from firearms.
- B. OLR may approve a provider who is a foster parent applicant or foster parent who is also a law enforcement official, to carry a firearm when the provider:
1. Obtains documentation that the jurisdiction requires him or her to have ready and immediate access to the weapons at all times;
 2. Supplies official documentation that he or she has been trained in the law enforcement protocols for the safe use and carrying of a firearm;
 3. Adopts and follows a safety plan approved by OLR and the licensing agency; and
 4. Stores the weapon according to the provisions of this Section when the weapon is not on their person.
- C. Notwithstanding subsections (A) and (B), weapons are not permitted in a Child Welfare Agency residential group care facility or group foster home.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-107. Animals

The home shall meet the following standards concerning animals:

1. Animals kept on the premises do not pose a hazard due to behavior, venom, or disease.
2. OLR may require an assessment by a veterinarian to determine whether a pet poses a hazard if the animal displays signs of aggressive or abnormal behavior or of disease.
3. The provider shall vaccinate any pets required to be vaccinated by state or tribal law against diseases that can transmit to humans, including rabies.
4. All dogs older than six months have current rabies vaccination. Vaccination records are maintained in the home.

Historical Note

New Section made by final exempt rulemaking at 21

A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-108. Storage of Medication

- A. The provider shall ensure:
1. Medication is maintained in a securely fastened and locked storage, with the exception of the following:
 - a. Medication that may be accessed by a foster child, as specified in that individual's case plan or service plan; and
 - b. Medication that must be readily and immediately accessible, such as an asthma inhaler or an autoinjector such as an epinephrine autoinjector, known as an Epi-pen.
 2. Medication that may be unlocked under subsection (1)(a) or (1)(b) is safeguarded to prevent improper use.
 3. Medication that must be refrigerated is safeguarded in locked storage, without preventing access to refrigerated food. This may be accomplished by storing refrigerated medication in a locked box within the refrigerator.
- B. A Child Welfare Agency provider shall safeguard medications using a double-lock system. A locked box stored inside a locked cabinet is an example of a double-lock system.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-109. Safe Appliances

The provider shall ensure:

1. Safe and functioning appliances are available for food refrigeration and cooking, if applicable.
 - a. Safe and functioning refrigerators shall maintain food at or below a temperature of 41° F.
 - b. An outdoor cooking appliance that uses charcoal or gas shall not be used indoors.
2. Electrical lighting is available in bedrooms, living areas, and rooms used to provide services.
 - a. Lighting is sufficient to perform normal activities, and
 - b. Light sockets are equipped with light bulbs or safely covered to prevent electrical shock.
3. Adequate heating, cooling, and ventilation are available in bedrooms, living areas, and rooms used to provide services. Temperatures outside the range of 65° - 85° F are indicators of inadequate heating or cooling.
4. At least one operable telephone is available on the premises unless OLR has approved an alternative system for communication. Telephone includes cellular phones, digital phones, and phones with traditional land lines.
5. If the premises have a clothes dryer, the dryer is safely vented with a non-flammable vent hose.
6. If a portable heater is on the premises, it has a protective covering to keep hands and objects away from the heating element and, it is:
 - a. Electric;
 - b. UL approved;
 - c. Equipped with a tip-over shut-off switch;
 - d. Placed at least three feet from curtains, paper, furniture, and any flammable object when in use;
 - e. Not used as the primary source for heat in the setting; and
 - f. Not used in bedrooms.
7. A carbon monoxide detector-alarm is properly located according to manufacturer's instructions and functioning on each level of the premises that has an appliance or heating device using combustible fuel, including gas, oil, or wood. Such appliances or devices include fireplaces, wood stoves, gas stoves, and gas hot water heaters.

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Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-110. Electrical Safety

The provider shall ensure:

1. Electrical cords are in good condition; no broken or frayed cords are in use.
2. Electrical panels and outlets are in good condition; no wiring is exposed, and covers are in place.
3. Extension cords are not used on a permanent basis.
4. Electrical outlets are not overloaded.
5. Major appliances are plugged directly into grounded outlets. Major appliances include refrigerators, freezers, dishwashers, stoves, ovens, washers, and dryers.
6. Mid-sized appliances, which include computers, televisions, and stereo equipment, are plugged into:
 - a. Grounded outlets, or
 - b. Power strips or surge protectors that are plugged into grounded outlets.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

R21-8-111. Water and Plumbing Requirements

- A. The provider shall ensure that a continuous source of safe drinking water is available to a foster child or child in a residential group care facility receiving care.
- B. The home must meet the following standards concerning water:
 1. If a home uses a non-municipal water source including private well water or another source of drinking water, the provider shall have the water tested for safety under subsection (B)(2).
 2. If the home's water is from any source other than an approved public water supply, the foster parent shall obtain a written water analysis report, showing that the water is within acceptable state and federal standards for drinking water for the age of the children in care. The provider shall obtain the analysis and report from a laboratory certified by the Arizona Department of Health Services as part of the initial licensing process and before each renewal.
- C. The provider shall ensure that the sewage disposal for the setting is functioning. If the setting has a septic tank, it shall be in good working order, with no visible signs of leakage on the ground.
- D. The provider shall ensure that at least one working toilet, wash basin, and shower or tub is available for every seven persons living or receiving care in the home at the same time.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

EMERGENCY RULEMAKING

Editor's Note: This emergency rulemaking was renewed at 23 A.A.R. 2946, effective October 2, 2017. An amendment was made to the original R21-8-112 as a final rulemaking effective December 12, 2017. Because both rules were filed in one supplement quarter the renewal of the emergency is being published for archival purposes in Supp. 17-4.

R21-8-112. Fire Safety and Evacuation Plan Requirements

The provider shall ensure:

1. The premises is free of obvious fire hazards, such as defective heating equipment, or improperly stored flammable materials. Household heating equipment must be

equipped with appropriate safeguards, maintained as recommended by the manufacturer.

2. Flammables and combustibles are stored more than three feet from water heaters, furnaces, portable heaters, fireplaces, and wood-burning stoves.
3. If the premises has a working fireplace or wood-burning stove, it is protected by a fire screen sufficient to shield the room from open flames and flying embers.
4. A functioning fire extinguisher with a rating of "2A 10BC" or greater is available near the kitchen area. If the home has multiple levels at least one functioning fire extinguisher with a rating of "2A 10BC" or greater is available on each level.
5. At least one UL approved and working smoke detector is installed:
 - a. In the main living or program area of the setting;
 - b. In each bedroom, if overnight care is provided; and
 - c. On each level of a multiple-level setting.
6. A written emergency evacuation plan is developed and maintained in the home, to provide guidance on the safe and rapid evacuation of the home. An emergency evacuation plan shall:
 - a. Be reviewed with the child within 72 hours of placement in the home and posted in a prominent place in the home;
 - b. Identify multiple exits from the home;
 - c. Identify two routes of evacuation from each bedroom on every floor used by individuals residing in or receiving care in the home. At least one of the exit routes for these bedrooms shall lead directly to the outside of the home. If that exit leads into an area that serves as a pool enclosure;
 - i. An individual receiving care in the home shall not use that bedroom and;
 - ii. If the exit is a window, it shall be secured with a latching device located not less than 54 inches above the finished floor;
 - iii. If the exit is a door, it shall be locked at all times with a latch or lock located a minimum of 54 inches above the floor. If there is no quick release on the lock, it must comply with the provisions of R21-8-112(11), and the key shall be located a minimum of 54 inches above the floor.
 - iv. Bedroom doors that lead into an area that serves as a pool enclosure shall comply with R21-8-112(6)(c)(iii) and also be self-closing and self-latching. Such doors that are hinged shall also swing outward from the pool area.
 - d. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders, and emergency lighting, as applicable;
 - e. Designate a safe central meeting place close to the home, known to the child, at a safe distance from potential danger;
 - f. Be maintained in the home to review with individuals residing in or receiving care in the home; and
 - g. Include the placement of equipment, such as a ladder, that can be safely used by the individuals residing in each upstairs bedroom that have been identified with fire exits.
7. All windows identified as fire exits, must have enough space for an adult to move through.
8. Each bedroom used by a foster or child in a residential group care facility receiving care or services has two exits the outside.

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- a. One exit shall be a path through the premises and leading to a door that opens to the outside. A garage door that opens either manually by lifting or with an automatic opener shall not be accepted as an exit.
 - b. Another exit shall be a window or door within the bedroom that opens directly to the outside.
9. Premises authorized to provide care or services to five or more children shall train staff and children in evacuation procedures and conduct emergency drills at least every three months as prescribed in this subsection.
 - a. Practice drills shall include actual evacuation of children to safe areas, outside, and beyond the home.
 - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
 - c. All persons in the home shall participate in the drill.
 - d. Records shall be maintained for each emergency drill and shall include:
 - i. Date and time of drill;
 - ii. Total evacuation time;
 - iii. Exits used;
 - iv. Problems noted; and
 - v. Measures taken to ensure that a foster child or a child in a residential group home facility understand the purpose of a drill and his or her responsibilities during a drill.
 10. The exit routes for the home are clear of obstruction that could prevent safe and rapid evacuation.
 11. The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department may grant an exception to this requirement for a double-key deadbolt on a door if:
 - a. There is breakable glass within 40 inches of the interior locking mechanism;
 - b. There is another exit with a quick release mechanism on the same level of the premises; and
 - c. The key for the deadbolt is permanently maintained in a location that is:
 - i. Within six feet of the locking mechanism;
 - ii. Accessible to all household members;
 - iii. Reviewed with persons residing in or receiving care in the home; and
 - iv. Identified on the emergency evacuation plan, specified in subsection (6).
 12. The address for the home is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the home in writing, with a copy of this notification maintained in the home.
 13. Providers must maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home.

Historical Note

Amended by emergency rulemaking at 23 A.A.R. 1040, effective April 14, 2017, for 180 days (Supp. 17-2).
Emergency renewed at 23 A.A.R. 2946, effective October 2, 2017 (Supp. 17-4).

R21-8-112. Fire Safety and Evacuation Plan Requirements

The provider shall ensure:

1. The premises is free of obvious fire hazards, such as defective heating equipment, or improperly stored flammable materials. Household heating equipment must be equipped with appropriate safeguards, maintained as recommended by the manufacturer.

2. Flammables and combustibles are stored more than three feet from water heaters, furnaces, portable heaters, fireplaces, and wood-burning stoves.
3. If the premises has a working fireplace or wood-burning stove, it is protected by a fire screen sufficient to shield the room from open flames and flying embers.
4. A functioning fire extinguisher with a rating of "2A 10BC" or greater is available near the kitchen area. If the home has multiple levels at least one functioning fire extinguisher with a rating of "2A 10BC" or greater is available on each level.
5. At least one UL approved and working smoke detector is installed:
 - a. In the main living or program area of the setting;
 - b. In each bedroom, if overnight care is provided; and
 - c. On each level of a multiple-level setting.
6. A written emergency evacuation plan is developed and maintained in the home, to provide guidance on the safe and rapid evacuation of the home. An emergency evacuation plan shall:
 - a. Be reviewed with the child within 72 hours of placement in the home and posted in a prominent place in the home;
 - b. Identify multiple exits from the home;
 - c. Identify two routes of evacuation from each bedroom on every floor used by individuals residing in or receiving care in the home. At least one of the exit routes for these bedrooms shall lead directly to the outside of the home. If that exit leads into an area that serves as a pool enclosure, a child six years of age or less receiving care in the home shall not reside in that bedroom.
 - i. If the exit is a window, it shall be secured with a latching device located a minimum of 54 inches above the floor; or
 - ii. If the exit is a door, it shall be locked at all times with a latching device or lock located a minimum of 54 inches above the floor. If there is no quick release mechanism on the lock, it must comply with the provisions of R21-8-112(11), and a key for the deadbolt shall be located a minimum of 54 inches above the floor. Bedroom doors that lead into an area that serves as a pool enclosure shall comply with this Section and also be self-closing and self-latching. Such doors that are hinged shall also swing outward from the pool area.
 - d. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders, and emergency lighting, as applicable;
 - e. Designate a safe central meeting place close to the home, known to the child, at a safe distance from potential danger;
 - f. Be maintained in the home to review with individuals residing in or receiving care in the home; and
 - g. Include the placement of equipment, such as a ladder, that can be safely used by the individuals residing in each upstairs bedroom that have been identified with fire exits.
7. All windows identified as fire exits, must have enough space for an adult to move through.

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8. Each bedroom used by a foster child or child in a residential group care facility receiving care or services has two exits to the outside.
 - a. One exit shall be a path through the premises and leading to a door that opens to the outside. A garage door that opens either manually by lifting or with an automatic opener shall not be accepted as an exit.
 - b. Another exit shall be a window or door within the bedroom that opens directly to the outside.
9. Premises authorized to provide care or services to five or more children shall train staff and children in evacuation procedures and conduct emergency drills at least every three months as prescribed in this subsection.
 - a. Practice drills shall include actual evacuation of children to safe areas, outside, and beyond the home.
 - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
 - c. All persons in the home shall participate in the drill.
 - d. Records shall be maintained for each emergency drill and shall include:
 - i. Date and time of drill;
 - ii. Total evacuation time;
 - iii. Exits used;
 - iv. Problems noted; and
 - v. Measures taken to ensure that a foster child or a child in a residential group home facility understand the purpose of a drill and his or her responsibilities during a drill.
10. The exit routes for the home are clear of obstruction that could prevent safe and rapid evacuation.
11. The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department may grant an exception to this requirement for a double-key deadbolt on a door if:
 - a. There is breakable glass within 40 inches of the interior locking mechanism;
 - b. There is another exit with a quick release mechanism on the same level of the premises; and
 - c. The key for the deadbolt is permanently maintained in a location that is:
 - i. Within six feet of the locking mechanism;
 - ii. Accessible to all household members;
 - iii. Reviewed with persons residing in or receiving care in the home; and
 - iv. Identified on the emergency evacuation plan, specified in subsection (6).
12. The address for the home is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the home in writing, with a copy of this notification maintained in the home.
13. Providers must maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).
Section amended by final rulemaking at 23 A.A.R. 3548, with an immediate effective date of December 12, 2017

(Supp. 17-4).

EMERGENCY RULEMAKING

Editor's Note: This emergency rulemaking was renewed at 23 A.A.R. 2946, effective October 2, 2017. An amendment was made to the original R21-8-113 as a final rulemaking effective December 12, 2017. Because both rules were filed in one supplement quarter the renewal of the emergency is being published for archival purposes in Supp. 17-4.

R21-8-113. Pool Safety

- A. The provisions of this Section apply to each Child Welfare Agency residential group care facility and licensee.
- B. For a home that has a pool, and provides care to a child six years of age or less, or an individual with a Developmental Disability, the provider shall ensure the following:
 1. That the pool complies with A.R.S. § 36-1681 and all local municipal codes to the extent not inconsistent with this Section.
 2. A fence or barrier meeting the following requirements is maintained between the pool and the home, or any building used to provide care and supervision.
 - a. The exterior side of the fence or barrier is at least five feet high;
 - b. If the barrier is a chain link fence or lattice, each opening in the mesh measures less than 1 3/4 inches horizontally. Chicken wire and other light gauge wire are prohibited as a primary fencing material for the pool;
 - c. If the barrier is a fence constructed of vertical bars or wooden slats, the openings between bars or slats measure less than four inches;
 - d. The exterior side of the barrier is free of hand holds or foot holds or other means that could be used to climb over it and if it has a horizontal component spaced at least 45 inches, measured vertically;
 - e. The gate to the enclosure is locked, except when in use and there is an adult within the enclosure to supervise the pool and spa area;
 - f. The connection between the panels of the fence cannot be separated without a key or a tool;
 - g. The fence is secured to the ground or has sufficient tension to prevent the fence from being lifted more than four inches from the ground;
 - h. If the home or building to provide care or supervision constitutes part of the enclosure:
 - i. The enclosure does not interfere with safe egress from the home;
 - ii. A door from the home does not open within the pool enclosure, unless it is a bedroom door in a bedroom not occupied by an individual receiving care and such a door cannot be opened by a foster child or child in a residential group care facility because it is either locked as required in R21-8-112(6)(c)(iii) or inoperable. Any key shall not be accessible to a foster child or child in a residential group care facility;
 - iii. A window located in a room that is designated as a bedroom for a foster child or child in a residential group care facility shall not open into the pool enclosure or shall be permanently locked and not used for egress; and
 - iv. Other windows that open into the pool enclosure are secured as required in R21-8-122(c)(ii).
 - v. Animal or doggie doors shall not open directly into the pool enclosure.

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3. A pool shall have its methods of access through the barrier equipped with a safety device, such as a bolt lock:
 - a. Gates should be self-closing and self-latching, maintained in good repair, and open out or away from the pool.
 - b. The gate latch is at least 54" above the ground and is equipped with a key or combination lock.
 4. If the swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system.
 5. Hot tubs and spas must have safety covers that are locked when not in use.
 6. Hot tubs and spas that are drained must be disconnected from the power and water source and have safety covers that are always locked.
- C.** The Department shall not approve a locked cover in lieu of the fence required under subsection (B).
- D.** After a fence has been inspected and approved by OLR as meeting the standards required under subsection (B), the provider shall ensure the fence is not dismantled or moved for as long as the provider is licensed by OLR.
- E.** Regardless of the age of the foster child or child in a residential group care facility living in the home, if the pool is deeper than six feet, the care provider shall ensure the following rescue equipment is available in the pool area:
1. A shepherd's crook attached to a pole; and
 2. A ring buoy attached to a rope that measures at least half of the distance across the pool plus 10 feet.
- F.** A drained pool is a safety hazard. The provider shall comply with this Section or R21-8-105, if applicable.

Historical Note

Amended by emergency rulemaking at 23 A.A.R. 1040, effective April 14, 2017, for 180 days (Supp. 17-2).
Emergency renewed at 23 A.A.R. 2946, effective October 2, 2017 (Supp. 17-4).

R21-8-113. Pool Safety

- A.** The provisions of this Section apply to each Child Welfare Agency residential group care facility and provider.
- B.** For a home that has a pool, and provides care to a child six years of age or less, or an individual with a Developmental Disability, the provider shall ensure the following:
1. That the pool complies with A.R.S. § 36-1681 and all local municipal codes to the extent not inconsistent with this Section.
 2. A fence or barrier meeting the following requirements is maintained between the pool and the home, or any building used to provide care and supervision.
 - a. The exterior side of the fence or barrier is at least five feet high;
 - b. If the barrier is a chain link fence or lattice, each opening in the mesh measures less than 1 3/4 inches horizontally. Chicken wire and other light gauge wire are prohibited as a primary fencing material for the pool;
 - c. If the barrier is a fence constructed of vertical bars or wooden slats, the openings between bars or slats measure less than four inches;
 - d. The exterior side of the barrier is free of hand holds or foot holds or other means that could be used to climb over it and if it has a horizontal component spaced at least 45 inches, measured vertically;
 - e. The gate to the enclosure is locked, except when in use and there is an adult within the enclosure to supervise the pool and spa area;
 - f. The connection between the panels of the fence cannot be separated without a key or a tool;
- C.** The Department shall not approve a locked cover in lieu of the fence required under subsection (B).
- D.** After a fence has been inspected and approved by OLR as meeting the standards required under subsection (B), the provider shall ensure the fence is not dismantled or moved for as long as the provider is licensed by OLR.
- E.** Regardless of the age of the foster child or child in a residential group care facility living in the home, if the pool is deeper than six feet, the care provider shall ensure the following rescue equipment is available in the pool area:
1. A shepherd's crook attached to a pole; and
 2. A ring buoy attached to a rope that measures at least half of the distance across the pool plus 10 feet.
- F.** A drained pool is a safety hazard. The provider shall comply with this Section or R21-8-105, if applicable.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).
Section amended by final rulemaking at 23 A.A.R. 3548, with an immediate effective date of December 12, 2017 (Supp. 17-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
 - (a) Cross-jurisdictional placements pursuant to section 8-548.
 - (b) Providing the cost of care of:
 - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
 - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.
 - (iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.
 - (c) Providing services for children placed in adoption.
10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.
13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.
15. Act as an agent of the federal government in furtherance of any functions of the department.
16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.
17. Cooperate with the superior court in all matters related to this title and title 13.
18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.
19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.
20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).
21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.
2. Contract with a private entity to provide any functions or services pursuant to this title.
3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.
4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.
4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-504. Sanitation, fire and hazard inspection

A. The division shall visit each child welfare agency and foster home and inspect the premises used for care of children for sanitation, fire and other actual and potential hazards. The division shall take action it deems necessary to carry out the duties imposed by this section including the denial of the application for licensure and the suspension or revocation of a license.

B. The division may delegate any additional inspection, examination or study provided for by this article, including inspection of premises for fire hazards, to an agency, department, political subdivision or governmental entity deemed appropriate by the division.

8-505. Issuance of licenses; application; investigation; renewal

- A. The issuance of initial and renewal licenses for child welfare agencies shall be made by the division.
- B. A child welfare agency shall not receive any child for care or maintenance or for placement in a foster home unless the agency is licensed by the division. Application for a license shall be made on a form prescribed by the division.
- C. The division shall, before issuing a license to an agency, investigate the activities and standards of care of the agency, its financial stability, the character and training of the applicant, the need for such agency, and the adequacy of its intended services to insure the welfare of children. A provisional license may be issued to any agency whose services are needed but which is temporarily unable to conform to the established standards of care. If the applicant meets the standards as established by the division a regular license shall be issued for a period of one year.
- D. Each license shall state in general terms the kind of child welfare service the licensee is authorized to undertake, the number of children that can be received if the licensee is a private agency, their ages and sex, and, if authorized to place and supervise children in foster homes, the geographical area the agency is equipped to serve.
- E. Every license shall expire one year from the date of issuance, and may be renewed annually on application of the agency, except that provisional licenses may be issued for not more than six months from the date of issuance and may not be renewed.

8-509. Licensing of foster homes; renewal of license; provisional license; exemption from licensure; immunization requirements

- A. The department shall license and certify foster homes. Licenses are valid for a period of two years.
- B. The department shall not issue a license without satisfactory proof that the foster parent or parents have completed six actual hours of approved initial foster parent training as set forth in section 8-503 and that each foster parent and each other adult member of the household has a valid fingerprint clearance card issued pursuant to section 41-1758.07. The foster parent and each other adult member of the household must certify on forms that are provided by the department and that are notarized whether the foster parent or other adult member of the household is awaiting trial on or has ever been convicted of any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction.
- C. The department shall not renew a license without satisfactory proof that the foster parent or parents have completed twelve actual hours of approved ongoing foster parent training during the two-year period of licensure as set forth in section 8-503.
- D. If the department determines that completing the training required in subsections B and C of this section would be a hardship to the foster parent or parents, the department may issue a provisional license for a period not to exceed six months. A provisional license may not be renewed.
- E. Child welfare agencies that submit foster homes for licensing shall conduct an investigation of the foster home pursuant to licensing rules of the department. The department shall conduct investigations of all other foster homes. If the foster home meets all requirements set by the department, the agency shall submit an application stating the foster home's qualifications to the department. The agency may also recommend the types of licensing and certification to be granted to the foster home.
- F. The department shall accept an adoptive home certification study as a licensing home study if the study has been updated within the past three months to include the information necessary to determine whether the home meets foster care licensing standards.
- G. This section does not apply if the child is placed in a home by a means other than by court order and if the home does not receive compensation from this state or any political subdivision of this state.
- H. The department may not prohibit a person operating a licensed foster home from applying for or receiving compensation as a foster home parent due to employment with this state.
- I. The department shall not require a foster parent to immunize the foster parent's natural or adoptive children as a condition of foster home licensure.
- J. A licensee may modify the renewal date of a license issued pursuant to this section by submitting an application for modification of renewal date with the department on a form prescribed by the department. The licensee must specify the new month of renewal on the application. The modified renewal date must be before, but not more than six months earlier than, the existing renewal date.
- K. The foster care review board shall review the cases of children placed by the department in foster homes licensed pursuant to this section as required by section 8-515.03.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Title 9, Chapter 22, Article 7

Amend: R9-22-701

New Section: R9-22-712.08



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 11, 2022

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 7

Amend: R9-22-701

New Section: R9-22-712.08

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend one rule and add one rule to Title 9, Chapter 22, Article 7 related to Standard for Payments. Specifically, these rules relate to Graduate Medical Education (GME) funding, which is distributed to hospitals that provide training and education for medical school graduates. The GME fund is authorized pursuant to A.R.S. 36-2903.01(G). Under A.R.S. § 36-2903.01(G)(9), certain public entities are permitted to transfer funds to the AHCCCS Administration to support these distributions.

Pursuant to Laws 2021, Chapter 81, AHCCCS is required to establish a separate GME program to reimburse qualifying Community Health Centers (CHCs) and Rural Health Centers (RHCs) which have an approved primary care GME program by March 1, 2022. Through this rulemaking, AHCCCS proposes to create a separate program for GME for CHCs and RHCs, notwithstanding the existing GME programs found in R9-22-712.05 and R9-22-712.06. AHCCCS indicates it worked with the Arizona Alliance for Community Health Centers and a

workgroup consisting of CHCs and RHCs to develop the methodology for distributing these payments, subject to Centers for Medicare and Medicaid Services (CMS) approval. AHCCCS also indicates technical and conforming changes will also be considered as part of the rulemaking.

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

AHCCCS cites both general and specific authority for these rules.

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

This rulemaking does not establish a new fee or contain a fee increase.

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

AHCCCS did not review or rely on any study in conducting this rulemaking.

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

As a result of information from the Arizona Alliance of Community Health Centers and a workgroup consisting of CHCs and RHCs, AHCCCS has determined that payments through this rulemaking are critical to support and incentivize primary care GME programs in Arizona. Although the state budget does not currently appropriate any monies for this program, the Laws 2021, Chapter 81 allows RHCs and CHCs to partner with local, county, and tribal governments and any universities under the jurisdiction of the Arizona Board of Regents to provide funds for a state contribution and receive federally matched funds, subject to approval by CMS. Thus, the proposed rulemaking would be funded from intergovernmental agreements with political subdivisions throughout the state.

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

AHCCCS 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. In addition, the rule is a result of Laws 2021, Chapter 81.

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

AHCCCS anticipates no increase in cost to the implementing agency because the cost will be borne voluntarily by local, county and tribal governments and universities. AHCCCS anticipates no specific benefit to the implementing agencies. AHCCCS does not anticipate the need to hire full-time employees as a result of this rulemaking.

AHCCCS anticipates that public and private employment will not be directly impacted but will be indirectly impacted in a positive way by this rulemaking because having the opportunity for more residents and fellows in Arizona Federally Qualified Health Centers (FQHCs) and RHCs make them more likely to remain in Arizona for their medical practice.

AHCCCS does not anticipate a fiscal impact on small businesses because the proposed rule language changes are anticipated to only affect FQHCs, RHCs, and AHCCCS. AHCCCS anticipates no impact on the administrative expenses of 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.

The rule will indirectly benefit private persons who received the care of physicians in Arizona.

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

AHCCCS indicates one change to the rule language was made from the Notice of Proposed Rulemaking to the Notice of Final Rulemaking before the Council. Specifically, AHCCCS indicates in the revision of GME programs in R9-22-701 the addition of the phrase “or fellowship” was misplaced in the definition title so it followed GME programs, and should instead describe the program by being listed after residency, so it is understood that both residency and fellowship programs are eligible GME programs.

Council staff does not believe this change creates a “substantial difference” between the proposed rule contained in the Notice of Proposed Rulemaking and the rule contained in the Notice of Final Rulemaking before the Council for consideration pursuant to A.R.S. § 41-1025.

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

AHCCCS indicates it received one comment in support of the rulemaking from the Arizona Alliance for Community Health Centers. Council staff finds that AHCCCS adequately addressed the comments related to this rulemaking.

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

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

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

Not applicable. AHCCCS indicates there is no corresponding federal law.

11. Conclusion

Pursuant to Laws 2021, Chapter 81, AHCCCS is required to establish a separate GME program to reimburse qualifying CHCs and RHCs which have an approved primary care GME program. Through this rulemaking, AHCCCS proposes to amend one rule and add one rule to create a separate program for GME for CHCs and RHCs.

AHCCCS is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(4). Specifically, AHCCCS indicates these rules will provide a benefit to the public and a penalty is not associated with a violation of the rules. Council staff believes AHCCCS has provided an adequate basis for an immediate effective date. Council staff recommends approval of this rulemaking.

February 3, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS R9-22-701 and R9-22-712.08, Rulemaking

Dear Ms. Sorenson:

- | | | |
|----|--|------------|
| 1. | The close of record date: | 01/03/2022 |
| 2. | Does the rulemaking activity relate to a Five Year Review Report: | No |
| a. | If yes, the date the Council approved the Five Year Review Report: | N/A |
| 3. | Does the rule establish a new fee: | No |
| a. | If yes, what statute authorizes the fee: | N/A |
| 4. | Does the rule contain a fee increase: | No |
| 5. | Is an immediate effective date requested pursuant to A.R.S. 41-1032: | Yes |

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule. AHCCCS certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and
7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,



Kasey Rogg
General Counsel

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

PREAMBLE

<u>1. Articles, Parts, or Sections Affected</u>	<u>Rulemaking Action:</u>
R9-22-701	Amend
R9-22-712.08	New

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. § 36-2907.06
Implementing statute: A.R.S. § 36-2907.06

3. The effective date of the rule:

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

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: 27 A.A.R. 2823, December 3, 2021.
Notice of Proposed Rulemaking: 27 A.A.R. 2791, December 3, 2021.

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

Name: Nicole Fries
Address: AHCCCS
Office of Administrative Legal Services
801 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:

Currently, Graduate Medical Education (GME) funding is distributed to hospitals that provide training and education for medical school graduates. The GME fund is authorized pursuant to A.R.S. 36-2903.01(G). Under A.R.S. § 36-2903.01(G)(9), certain public entities are permitted to transfer funds to the AHCCCS Administration to support these distributions. The Centers for Medicare and Medicaid Services (CMS) require the Administration to annually update the amount allocated to each hospital in the State Plan. Before the Administration may make GME payments, a State Plan Amendment (SPA) must be submitted and approved by CMS. Therefore, no payments under this rulemaking may be made until AHCCCS has received approval for the SPA corresponding to this rulemaking.

Laws 2021, Chapter 81, requires that by March 1, 2022, the Administration establish a separate GME program to reimburse qualifying CHCs and RHCs which have an approved primary care GME program. Through this rulemaking, the Administration proposes to create a separate program for GME for CHCs and RHCs, notwithstanding the existing GME programs found in R9-22-712.05 and R9-22-712.06. The AHCCCS Administration worked with the Arizona Alliance for Community Health Centers and a workgroup consisting of CHCs and RHCs to develop the methodology for distributing these payments, subject to CMS approval. Technical and conforming changes will also be considered as part of the rulemaking.

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:

No study was relied upon.

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:

As a result of information from the Arizona Alliance of Community Health Centers and a workgroup consisting of CHCs and RHCs, AHCCCS has determined that payments through this rulemaking are critical to support and incentivize primary care GME programs in Arizona. Although the state budget does not currently appropriate

any monies for this program, the Laws 2021, Chapter 81 allows RHCs and CHCs to partner with local, county, and tribal governments and any universities under the jurisdiction of the Arizona Board of Regents to provide funds for a state contribution and receive federally matched funds, subject to approval by CMS. Thus, the proposed rulemaking would be funded from intergovernmental agreements with political subdivisions throughout the state.

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

One change was made from the proposed rule to the final rule text. In the revision of GME programs in R9-22-701 the addition of the phrase “or fellowship” was misplaced in the definition title so it followed GME programs, and should instead describe the program by being listed after residency, so it is understood that both residency and fellowship programs are eligible GME programs.

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

Name	Date	Comment	AHCCCS response
Victoria Burns, Senior Director, Regulatory Affairs & Reimbursement, Arizona Alliance for Community Health Centers	12/30/2021	The Arizona Alliance for Community Health Centers appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NOPR) for proposed R9-22-712.08 and related revisions to R9-22-701 definitions. With Laws 2021, Chapter 81, the Arizona Legislature signaled its commitment to continuing Arizona's pattern of success in bringing MD and DO residents to the state through the use of Medicaid funding in support of training facilities. CHCs welcome the opportunity to contribute to that success by growing the availability of training in community-based primary care. The Alliance believes the Administration's approach to implementation, as reflected in this NOPR, is sound and accurately captures the substantive insights brought to the discussion by the CHC and RHC participants in the	AHCCCS thanks AACHC for their support of this rulemaking.

		workgroup. The Alliance supports promulgation of this proposed Rule. With appreciation for the Administration's service to the residents of Arizona.	
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12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules.

No other matters have been prescribed.

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

Not applicable.

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

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 analysis was submitted.

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

None.

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

The rules were not previously made, amended, or repealed as emergency rules.

15. The full text of the rules follow:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-701. Standards for Payments Related Definitions

R9-22-712.08. Federally Qualified Health Center and Rural Health Clinic Graduate Medical Education Program

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-701 Standard for Payments Related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

“Accommodation” means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is semi-private except when the member must be isolated for medical reasons. Types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

“Aggregate” means the combined amount of hospital payments for covered services provided within and outside the GSA.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member beginning with the day of admission and including the day of death, if applicable, but excluding the day of discharge, provided that all eligibility, medical necessity, and medical review requirements are met.

“Ancillary service” means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including post anesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“APC” means the Ambulatory Payment Classification system under 42 CFR 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

“Billed charges” means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

“Business agent” means a company such as a billing service or accounting firm that renders billing statements and receives payment in the name of a provider.

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

“Copayment” means a monetary amount, specified by the Director, that a member pays directly to a contractor or provider at the time covered services are rendered.

“Cost-to-charge ratio” (CCR) means a hospital’s costs for providing covered services divided by the hospital’s charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHCCCS by each hospital.

“Covered charges” means billed charges that represent medically necessary, reasonable, and customary items of expense for covered services that meet medical review criteria of AHCCCS or a contractor.

“CHC” means a Community Health Center, which includes both Federally Qualified Health Centers and Rural Health Clinics.

“CPT” means Current Procedural Terminology, published, and updated by the American Medical Association. CPT is a nationally-accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians that provide a uniform language to accurately designate medical, surgical, and diagnostic services.

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g).

“Direct graduate medical education costs” or “direct program costs” means the costs that are incurred ~~by a hospital~~ for the education activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

“DRI inflation factor” means Global Insights Prospective Hospital Market Basket.

“Eligibility posting” means the date a member’s eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

“Encounter” means a record of a medically-related service rendered by an AHCCCS-registered provider to a member enrolled with a contractor on the date of service.

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase or how the service was described in the charge master before filing the increase.

“Expansion funds” means funds appropriated to support GME program expansions as described under A.R.S. § 36- 2903.01(G)(9)(b) and (c)(i).

“Factor” means a person or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

“Fiscal intermediary” means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

“Freestanding Children’s Hospital” means a separately standing hospital with at least 120 pediatric beds that is dedicated to ~~provide~~providing the majority of the hospital’s services to children.

“GME program approved by the Administration” or “approved GME program” means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.

“Graduate medical education (GME) program” means an approved residency or fellowship program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.

“HCAC” means a health care acquired condition described under 42 CFR 447.26 but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

“HCPCS” means the Health Care Procedure Coding System, published, and updated by Center for Medicare and Medicaid Services (CMS). HCPCS is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, and substances, equipment, supplies, or other items used in health care services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as specified under 45 CFR 162, that establishes standards and requirements for the electronic transmission of certain health information by defining code sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

“ICU” means the intensive care unit of a hospital.

“Indirect program costs” means the marginal increase in operating costs that a ~~hospital~~provider experiences as a result of having an approved graduate medical education program and that is not accounted for by the ~~hospital’s~~ direct program costs.

“Intern and Resident Information System” means a software program used by teaching ~~hospitals~~providers and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.

“Medical education costs” means direct ~~hospital~~ costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post-payment review, or determining medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“Medicare Urban or Rural Cost-to-Charge Ratio (CCR)” means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.

“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.

“New hospital” means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial rate setting or rebasing.

“NICU” means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services, is not a free-standing psychiatric hospital, such as an IMD, and is paid under ADHS rates.

“Observation day” means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.

“Operating costs” means AHCCCS-allowable accommodation costs and ancillary department hospital costs excluding capital and medical education costs.

“OPPC” means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.

“Organized health care delivery system” means a public or private organization that delivers health services. It includes, but is not limited to, a clinic, a group practice prepaid capitation plan, and a health maintenance organization.

“Outlier” means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under this Article and A.R.S. § 36- 2903.01(G).

“Outpatient hospital service” means a service provided in an outpatient hospital setting that does not result in an admission.

“Ownership change” means a change in a hospital’s owner, lessor, or operator under 42 CFR 489.18(a).

“Participating institution” means an institution at which portions of a graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

“Peer group” means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

“PPS bed” means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.

“Primary care GME program” means a graduate medical education program that prepares a physician for the practice of internal medicine, family medicine, pediatrics, obstetrics, geriatrics, or psychiatry.

“Procedure code” means the numeric or alphanumeric code listed in the CPT or HCPCS manual by which a procedure or service is identified.

“Prospective rates” means inpatient or outpatient hospital rates set by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quickpay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.

“Public hospital” means a hospital that is owned and operated by county, state, or hospital health care district.

“Qualifying health information exchange organization” means a non-profit health information organization as defined in A.R.S. § 36-3801 that provides the statewide exchange of patient health information among disparate health care organizations and providers not owned, operated, or controlled by the health information exchange. A qualifying health information exchange organization must include representation by the administration on its board of directors, and have a significant number of health care participants, including hospitals, laboratories, payers, community physicians and Federally Qualified Health Centers.

“Rebase” means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.

“Reinsurance” means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of specified contract service costs incurred by a member beyond a certain monetary threshold.

“Remittance advice” means an electronic or paper document submitted to an AHCCCS-registered provider by AHCCCS to explain the disposition of a claim.

“Resident” means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician’s eligibility for board certification.

“Revenue code” means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB04 forms.

“Sub-acute services” means inpatient care for a patient with an acute illness, injury, or exacerbation of a disease process when the patient does not require acute inpatient hospitalization. Sub-acute care is rendered immediately after, or instead of, acute inpatient hospitalization.

“Specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

“Sponsoring institution” means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of academic quality and compliance with the terms of accreditation.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure, or revenue codes, peer group, NICU classification level, or any combination of these items.

“Tiered per diem” means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.

“Trip” means a one-way transport each time a taxi is called. If the taxi waits for the member, then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

R9-22-712.08 Federally Qualified Health Center and Rural Health Clinic Graduate Medical Education Program

A. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for primary care GME programs approved by the Administration to Federally Qualified Health Centers (FOHC) and Rural Health Clinics (RHC) for direct and indirect program costs eligible for funding under A.R.S. § 36-2907.06(D).

1. A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D).
2. For purposes of this subsection, the term “FOHC” includes Federally Qualified Health Center Look-Alikes.

B. Eligible health care facilities. A health care facility is eligible for a distribution under subsection (G) if all of the following apply:

1. It is an FOHC or RHC in Arizona that is the sponsoring institution of, or a full member of a consortium that is the sponsoring institution of, or a participating institution in, one or more approved primary care GME programs in Arizona;
2. It incurs direct or indirect costs for the training of residents in Arizona in approved primary care GME programs;
3. The GME program is not eligible for funding under R9-22-712.05; and
4. The GME program is not fully funded by the federal government.

C. Eligible residents and resident positions. For purposes of determining program allocation amounts under subsections (E) and (F) the following residents and resident positions are eligible for consideration, to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B):

1. All filled resident positions in approved primary care GME programs; or
2. For approved primary care GME programs established for less than one year as of the date of annual reporting under subsection (D) and that have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.

D. Annual reporting. By April 1st of each year, an FOHC or RHC seeking a distribution under this subsection shall:

1. Provide to the Administration the following information about each approved primary care GME program:
 - a. The program name and number assigned by the accrediting organization;
 - b. The original date of accreditation of the program;
 - c. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
 - d. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
 - e. The academic year rotation schedule on file with the program current as of the date of reporting; and
 - f. For programs described under subsection (C)(2), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
2. Provide to the Administration the most recent Medicare Cost Report for the FOHC or RHC seeking the distribution, and
3. For an FOHC or RHC that is a full member of a consortium that is the sponsoring institution of an approved primary care GME program, provide to the Administration a signed letter attesting to the responsibility of the full member FOHC or RHC for direct or indirect costs of training residents in the program.

- E. Allocation of funds for direct graduate medical education costs. Annually the Administration shall allocate available funds for direct graduate medical education costs to each eligible FOHC or RHC in the following manner:
1. A Medicaid utilization percent for each FOHC or RHC seeking a distribution shall be calculated using the Medicare Cost Report submitted under subsection (D)(2), dividing the Title XIX visit count by the whole number of visits reported and rounding the result up to the nearest multiple of 5 percent.
 2. A total number of residents eligible for funding in each program shall be calculated using the information submitted under subsection (D)(1), dividing the number of resident rotations in the year that take place in Arizona and not at a health care facility made ineligible under subsection (B) by the total number of resident rotations in the program for that year, multiplying the result by the total number of filled resident positions in the program and rounding to two digits after the decimal.
 3. The allocation for direct graduate medical education costs for each eligible FOHC or RHC shall be calculated by multiplying the number of residents determined under subsection (E)(2) by the statewide average per-resident amount determined under this subsection and multiplying the result by the Medicaid utilization percent calculated for the FOHC or RHC under subsection (E)(1). The statewide average per-resident amount for the academic year ending June 30, 2022 is \$170,090. Annually thereafter, a statewide average per-resident amount shall be calculated by applying the Federally Qualified Health Center PPS Market Basket Update less Productivity Adjustment published by CMS for the calendar year in which the GME academic year begins.
- F. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds for indirect program costs to each eligible FOHC or RHC in the following manner:
1. By multiplying the number of residents determined under subsection (E)(2) by the statewide average per-resident amount determined under this subsection and multiplying the result by the Medicaid utilization percent calculated for the FOHC or RHC under subsection (E)(1). The statewide average per-resident amount for the academic year ending June 30, 2022 is \$167,330. Annually thereafter, a statewide average per-resident amount shall be calculated by applying the Federally Qualified Health Center PPS Market Basket Update less Productivity Adjustment published by CMS for the calendar year in which the GME academic year begins.
- G. Distribution of funds. On an annual basis subject to available funds, the Administration shall distribute to each eligible FOHC and RHC the sum of all amounts calculated for the FOHC or RHC under subsections (E)(3) and (F).
- H. The Administration may enter into intergovernmental agreements with local, county, and tribal governments and any university under the jurisdiction of the Arizona Board of Regents wherein such entities may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will contribute to the state funding to qualify for federal matching funds. Those funds will be used for the purposes of reimbursing FOHCs and RHCs that are eligible under this rule and designated by the local, county, or tribal governments for receipt of the contributed funds. The Administration shall allocate available funds in accordance with subsections (E) and (F).

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- F. Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:
1. An appeal is filed before a contract award, and
 2. The procurement officer issues a stay of the contract award under subsection (E), unless
 3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G. Decision by the procurement officer.
1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
 2. The procurement officer shall furnish a copy of the decision to the protester by:
 - a. Certified mail, return receipt requested; or
 - b. Any other method that provides evidence of receipt.
 3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.
- H. Remedies.
1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
 - a. Seriousness of the procurement deficiency,
 - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
 - c. Good faith of the parties,
 - d. Extent of performance,
 - e. Costs to the state, and
 - f. Urgency of the procurement.
 3. An appropriate remedy may include one or more of the following:
 - a. Terminating the contract;
 - b. Reissuing the RFP;
 - c. Issuing a new RFP;
 - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
 - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I. Appeals to the Director.
1. A person may file an appeal of a procurement officer's decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
 2. The appeal shall contain:
 - a. The information required in subsection (C)(2),
 - b. A copy of the procurement officer's decision,
 - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
 - d. A request for hearing unless the person requests that the Director's decision be based solely upon the procurement file.
- J. Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
1. The appeal does not state a basis for protest,
 2. The appeal is untimely under subsection (I)(1), or
 3. The appeal is moot.
- K. Hearing. Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.
- Historical Note**
- Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- R9-22-605. Waiver of Contractor's Subcontract with Hospitals**
- If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.
- Historical Note**
- Adopted effective January 31, 1986 (Supp. 86-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- R9-22-606. Contract Compliance Sanction**
- A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
 2. Imposition of a monetary sanction.
- B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- ARTICLE 7. STANDARDS FOR PAYMENTS**
- R9-22-701. Standard for Payments Related Definitions**
- In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:
- "Accommodation" means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is

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semi-private except when the member must be isolated for medical reasons. Types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

“Aggregate” means the combined amount of hospital payments for covered services provided within and outside the GSA.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member beginning with the day of admission and including the day of death, if applicable, but excluding the day of discharge, provided that all eligibility, medical necessity, and medical review requirements are met.

“Ancillary service” means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“APC” means the Ambulatory Payment Classification system under 42 CFR 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

“Billed charges” means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

“Business agent” means a company such as a billing service or accounting firm that renders billing statements and receives payment in the name of a provider.

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

“Copayment” means a monetary amount, specified by the Director, that a member pays directly to a contractor or provider at the time covered services are rendered.

“Cost-to-charge ratio” (CCR) means a hospital’s costs for providing covered services divided by the hospital’s charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHCCCS by each hospital.

“Covered charges” means billed charges that represent medically necessary, reasonable, and customary items of expense for covered services that meet medical review criteria of AHCCCS or a contractor.

“CPT” means Current Procedural Terminology, published and updated by the American Medical Association. CPT is a nationally-accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians that provide a uniform language to accurately designate medical, surgical, and diagnostic services.

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g). “Direct graduate medical education costs” or “direct program costs” means the costs that are incurred by a hospital for the education activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

“DRI inflation factor” means Global Insights Prospective Hospital Market Basket.

“Eligibility posting” means the date a member’s eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

“Encounter” means a record of a medically-related service rendered by an AHCCCS-registered provider to a member enrolled with a contractor on the date of service.

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase or how the service was described in the charge master before filing the increase.

“Expansion funds” means funds appropriated to support GME program expansions as described under A.R.S. § 36-2903.01(G)(9)(b) and (c)(i).

“Factor” means a person or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

“Fiscal intermediary” means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

“Freestanding Children’s Hospital” means a separately standing hospital with at least 120 pediatric beds that is dedicated to provide the majority of the hospital’s services to children.

“GME program approved by the Administration” or “approved GME program” means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.

“Graduate medical education (GME) program” means an approved residency program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.

“HCAC” means a health care acquired condition described under 42 CFR 447.26 but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

“HCPCS” means the Health Care Procedure Coding System, published and updated by Center for Medicare and Medicaid Services (CMS). HCPCS is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, and substances, equipment, supplies or other items used in health care services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as specified under 45 CFR 162, that establishes standards and requirements for the electronic transmission of certain health information by defining code sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

“ICU” means the intensive care unit of a hospital.

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“Indirect program costs” means the marginal increase in operating costs that a hospital experiences as a result of having an approved graduate medical education program and that is not accounted for by the hospital’s direct program costs.

“Intern and Resident Information System” means a software program used by teaching hospitals and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.

“Medical education costs” means direct hospital costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post-payment review, or determining medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“Medicare Urban or Rural Cost-to-Charge Ratio (CCR)” means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.

“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.

“New hospital” means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial rate setting or rebasing.

“NICU” means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services, is not a free-standing psychiatric hospital, such as an IMD, and is paid under ADHS rates.

“Observation day” means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.

“Operating costs” means AHCCCS-allowable accommodation costs and ancillary department hospital costs excluding capital and medical education costs.

“OPPC” means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.

“Organized health care delivery system” means a public or private organization that delivers health services. It includes, but is not limited to, a clinic, a group practice prepaid capitation plan, and a health maintenance organization.

“Outlier” means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under this Article and A.R.S. § 36-2903.01(G).

“Outpatient hospital service” means a service provided in an outpatient hospital setting that does not result in an admission.

“Ownership change” means a change in a hospital’s owner, lessor, or operator under 42 CFR 489.18(a).

“Participating institution” means an institution at which portions of a graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

“Peer group” means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

“PPS bed” means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.

“Procedure code” means the numeric or alphanumeric code listed in the CPT or HCPCS manual by which a procedure or service is identified.

“Prospective rates” means inpatient or outpatient hospital rates set by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quick-pay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.

“Public hospital” means a hospital that is owned and operated by county, state, or hospital health care district.

“Qualifying health information exchange organization” means a non-profit health information organization as defined in A.R.S. § 36-3801 that provides the statewide exchange of patient health information among disparate health care organizations and providers not owned, operated, or controlled by the health information exchange. A qualifying health information exchange organization must include representation by the administration on its board of directors, and have a significant number of health care participants, including hospitals, laboratories, payers, community physicians and Federally Qualified Health Centers.

“Rebase” means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.

“Reinsurance” means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of specified contract service costs incurred by a member beyond a certain monetary threshold.

“Remittance advice” means an electronic or paper document submitted to an AHCCCS-registered provider by AHCCCS to explain the disposition of a claim.

“Resident” means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician’s eligibility for board certification.

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“Revenue code” means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB-04 forms.

“Sub-acute services” means inpatient care for a patient with an acute illness, injury or exacerbation of a disease process when the patient does not require acute inpatient hospitalization. Sub-acute care is rendered immediately after, or instead of, acute inpatient hospitalization.

“Specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

“Sponsoring institution” means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of academic quality and compliance with the terms of accreditation.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure, or revenue codes, peer group, NICU classification level, or any combination of these items.

“Tiered per diem” means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.

“Trip” means a one-way transport each time a taxi is called. If the taxi waits for the member then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-701 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-701 repealed, new Section R9-22-701 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014; amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-701.01. Reserved

R9-22-701.02. Reserved

R9-22-701.03. Reserved

R9-22-701.04. Reserved

R9-22-701.05. Reserved

R9-22-701.06. Reserved

R9-22-701.07. Reserved

R9-22-701.08. Reserved

R9-22-701.09. Reserved

R9-22-701.10 Scope of the Administration’s and Contractor’s Liability

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member’s eligibility or during the member’s enrollment with a contractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-702. Charges to Members

- A.** For purposes of this subsection, the term “member” includes the member’s financially responsible representative as described under A.R.S. § 36-2903.01.
- B.** Registered providers must accept payment from the Administration or a contractor as payment in full.
- C.** Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.
- D.** An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:
 1. To collect the copayment described in R9-22-711;
 2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCCS;
 3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member’s AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied;
 4. For a service that is excluded by statute or rule, or provided in an amount that exceeds a limitation in statute or rule, if the member signs a document in advance of receiving the service stating that the member understands the service is excluded or is subject to a limit and that the member will be financially responsible for payment for the excluded service or for the services in excess of the limit;
 5. When the contractor or the Administration has denied authorization for a service if the member signs a document in advance of receiving the service stating that the member understands that authorization has been denied and that the member will be financially responsible for payment for the service;

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION

ARTICLE 7. SUPPLEMENTAL GRADUATE MEDICAL EDUCATION FUND ALLOCATION

Introduction:

In 2006, the 47th Legislature approved additional funds for distribution to training hospitals for Graduate Medical Education (GME) programs. The funds, which were in addition to the funds allocated yearly to teaching hospitals, are designated to support programs that have expanded and will expand their educational efforts. Prior to September 30, 1997, hospitals were reimbursed for GME costs under the tiered per diem methodology. Beginning September 30, 1997, the Administration was required to establish a separate GME program to reimburse hospitals with approved GME programs, currently funded by Intergovernmental Agreements (IGA's). Laws 2021, Chapter 81 requires the Administration to establish a graduate medical education (GME) supplemental payment for community health centers (CHCs) and rural health clinics (RHCs). The new rule created in this rulemaking will be R9-22-712.08. Corresponding definitions and descriptions will be updated in R9-22-701

Purpose of Rule:

A.R.S. § 36-2903.01 requires the Administration to describe in rule how Graduate Medical Education (GME) funds are calculated and distributed. Monies are to be made for the direct and indirect costs of graduate medical education, are to supplement but not supplant voluntary payments made from political subdivisions for payments to FQHCs and RHCs to operate GME programs. The Centers for Medicare and Medicaid Services (CMS) require the AHCCCS Administration to explain how FQHCs and RHCs will receive payments in the State Plan. Before AHCCCS may make GME payments, a State Plan Amendment (SPA) must be submitted and approved by CMS. Technical and conforming changes will also be made.

1. Identification of rulemaking

Laws 2021, Chapter 81, requires that by March 1, 2022, the AHCCCS Administration establish a separate GME program to reimburse qualifying CHCs and RHCs which have an approved primary care GME program. The AHCCCS Administration is working with the Arizona Alliance for Community Health Centers and a workgroup consisting of CHCs and RHCs to develop the methodology for distributing these payments. Although the budget does not currently appropriate any monies for this program, the legislation allows RHCs and CHCs to partner with local, county, and tribal government and any universities under the jurisdiction of the Arizona Board of Regents to provide a state match and received federally matched funds, if approved by the Centers for Medicare and Medicaid. The proposed rulemaking would be funded from intergovernmental agreements with political subdivisions throughout the state.

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

This rule will create GME supplemental payments to FQHCs and RHCs in Arizona, who have previously not received these payments.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

If this rule is not enacted, the Administration will not be able to comply with Laws 2021, Chapter 81, and FQHCs and RHCs will not have enough funding to retain an adequate number of medical residents and fellows each year.

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

This conduct did not previously exist.

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

The rulemaking is intended to increase the number of practicing physicians, MDs and DOs, who practice in the State following their residency or fellowship. The payment structure in the rulemaking prioritizes specialties of practice where physician are in greater need, as well as the differences in needs for physicians in rural vs. urban counties. Although there will be a greater cost to the State General Fund due to these supplemental Graduate Medical Education payments, the legislature determined that was outweighed by the benefit for the patients of Arizona in having a greater supply of MDs and DOs.

3. Cost benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:

The Administration anticipates no increase in cost to the implementing agency because the cost will be born voluntarily by local, county and tribal governments and universities.

ii. Benefit:

The Administration anticipates no specific benefit to the implementing agencies.

iii. Need for additional Full-time Employees:

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

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

Since the supplemental payments are funded by voluntary donations on behalf of local and county governments and the Board of Regents, any cost and benefit are voluntary, this rulemaking merely creates the authority for the payments.

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

The Administration anticipates that public and private employment will not be directly impacted but will be indirectly impacted in a positive way by this rulemaking because having the opportunity for more residents and fellows in Arizona FQHCs and RHCs, make them more likely to remain in Arizona for their medical practice.

5. Statement of probable impact of the proposed rule on small businesses. The statement shall include:

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

The Administration does not anticipate a fiscal impact on small businesses because the proposed rule language changes are anticipated to only affect FQHCs, RHCs, and the Administration.

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

The Administration anticipates no impact on the administrative expenses of small businesses.

c. Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:

i. Establishing less stringent compliance or reporting requirements in the rule for small businesses:

This rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

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

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

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

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

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

This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

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

Exempting small businesses is not applicable to this rule.

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

The rule will indirectly benefit private persons who received the care of a physicians in Arizona.

6. Statement of the probable effect on state revenues.

It is anticipated that the rule will not affect state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers. In addition, the rule is a result of Laws 2021, Chapter 81.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

The Administration did not consider any specific data to base the rule upon.

36-2907.06. Qualifying community health centers; rural health clinics; contracts; requirements; graduate medical education; definition

(Conditionally Rpld.)

A. Subject to the availability of monies, the administration shall enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with the department of health services to contract with qualifying community health centers to provide primary health care services to indigent or uninsured Arizonans. The department of health services shall enter into one-year contracts with qualifying community health centers for the centers to provide the following primary health care services:

1. Medical care provided through licensed primary care physicians and licensed mid-level providers as defined in section 36-2907.05.
2. Prenatal care services.
3. Diagnostic laboratory and imaging services that are necessary to complete a diagnosis and treatment, including referral services.
4. Pharmacy services that are necessary to complete treatment, including referral services.
5. Preventive health services.
6. Preventive dental services.
7. Emergency services performed at the qualifying community health center.
8. Transportation for patients to and from the qualifying community health center if these patients would not receive care without this assistance.

B. A contract entered into pursuant to subsection A of this section may include urgent care services for walk-in patients.

C. Each contract shall require that the qualifying community health center provide the services prescribed in subsection A of this section to persons who the center determines:

1. Are residents of this state.
2. Are without medical insurance policy coverage.
3. Do not have a family income of more than two hundred percent of the federal poverty guidelines.
4. Have provided verification that the person is not eligible for enrollment in the Arizona health care cost containment system pursuant to this chapter.
5. Have provided verification that the person is not eligible for medicare.

D. The department of health services shall directly administer the program and issue requests for proposals for the contracts prescribed in this section. Contracts established pursuant to subsection A of this section shall be signed by the department and the contractor before the transmission of any tobacco tax and health care fund monies to the contractor.

E. Persons who meet the eligibility criteria established in subsection C or H of this section shall be charged for services based on a sliding fee schedule approved by the department of health services.

F. In awarding contracts, the department of health services may give preference to qualifying community health centers that have a sliding fee schedule. Monies shall be used for the number of patients that exceeds the number of uninsured sliding fee schedule patients that the qualifying community health center served during fiscal year 1994. Each qualifying community health center shall make its sliding fee schedule available to the public on request. The contract shall require the qualifying community health center to apply a sliding fee schedule to all of its uninsured patients.

G. The department of health services may examine the records of each qualifying community health center and conduct audits necessary to determine that the eligibility determinations were performed accurately and to verify the number of uninsured patients served by the qualifying community health center as a result of receiving tobacco tax and health care fund monies by the contract established pursuant to subsection A of this section.

H. Contracts established pursuant to subsection A of this section shall require qualifying community health center contractors to submit information as required pursuant to section 36-2907.07 for program evaluations.

I. Beginning March 1, 2022, the administration shall establish, contingent on approval by the centers for medicare and medicaid services, a separate graduate medical education program to reimburse qualifying community health centers and rural health clinics that have an approved primary care graduate medical education program. The administration shall:

1. Distribute to qualifying community health centers and rural health clinics any monies appropriated for graduate medical education for the direct and indirect costs of primary care graduate medical education programs that are established by qualifying community health centers and rural health clinics and that are approved by the administration.

2. Adopt rules specifying the formula by which the monies are distributed.

3. Require each primary care graduate medical education program that receives monies pursuant to paragraph 1 of this subsection to identify and report to the administration the number of new residency positions created with those monies, including positions in rural areas. Each 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 on or before July 1 of each year on the number of new residency positions as reported by the primary care graduate medical education programs pursuant to this paragraph.

4. Coordinate with local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents that may provide monies in addition to any state general fund monies appropriated for primary care graduate medical education in order to qualify for additional matching federal monies for programs or positions in a specific locality. Payments by the administration pursuant to this paragraph 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 paragraph 1 of this subsection had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions and payment methodologies 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 monies contributed and the number of residency positions funded by local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents, including the amount of federal matching monies used.

J. For the purposes of this section, "qualifying community health center" means a community-based primary care facility that provides medical care in medically underserved areas as provided in section 36-2352, or in medically underserved areas or medically underserved populations as designated by the United States

department of health and human services, through the employment of physicians, professional nurses, physician assistants or other health care technical and paraprofessional personnel.

DEPARTMENT OF AGRICULTURE

Title 3, Chapter 2, Article 9

Amend: R3-2-901, R3-2-903, R3-2-905, R3-2-906, R3-2-907



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 11, 2022

SUBJECT: DEPARTMENT OF AGRICULTURE
Title 3, Chapter 2, Article 9

Amend: R3-2-901, R3-2-903, R3-2-905, R3-2-906, R3-2-907

Summary:

This regular rulemaking from the Department of Agriculture (Department) seeks to amend five (5) rules in Title 3, Chapter 2, Article 9 related to Egg and Egg Products Control. Specifically, the proposed amendments establish updated poultry husbandry standards, including increased minimum floor space requirements for laying hens reducing stocking densities. Additionally, the amendments establish a transition from traditional caged production methods to cage-free production.

Under the proposed amendments, all caged egg-laying hens in the state shall be required to be raised according to the United Egg Producers ("UEP") Animal Husbandry Guidelines until September 30, 2022. From October 1, 2022, until December 31, 2024, all eggs sold in the state must come from laying hens raised according to the UEP Animal Husbandry Guidelines and housed in a cage with at least one square foot of usable floor space per laying hen. From January 1, 2025, forward, all laying hens in the state must be housed in a cage-free manner, and all eggs sold in the state must come from hens housed in a cage-free manner. An exemption would be made for egg producers whose operation has fewer than 20,000 egg-producing hens.

The Department states the amendments are intended to represent the best management practices in the shell egg industry that ensure the production of high-quality, cruelty-free eggs. The amendments also reflect market trends, which producers anticipate will shift to cage-free eggs by 2025.

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

The Department cites both general and specific authority for these rules. Specifically, A.R.S. § 3-710(J) gives the Department the express authority to adopt rules regulating “poultry husbandry and the production of eggs sold in this state.”

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

This rulemaking establishes a new fee for “scheduled continuous grading, certification, and inspection services” in rule R3-2-905(C) as well as “plant survey, unscheduled temporary, certification, auditing and appeal grading services” in rule R3-2-905(D). Pursuant to A.R.S. § 3-710(L), the Director of the Department may “[e]stablish an egg promotion program to provide certification, inspection and grading services and may prescribe, by rule, fees for those services.”

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

Section 7 of the preamble discloses references to numerous studies relevant to the rules that the Department reviewed and relied on. Given the volume of studies references, copies of the studies provided by the Department are not included with the final materials for this rulemaking, but are available from Council staff upon request.

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

The Department's economic, small business, and consumer impact statement concludes that the rulemaking's benefits outweigh the costs to the Department, producers, retailers, and consumers. The Department indicates the rulemaking, and the transition to cage-free production, will increase producers' production costs, in Arizona and elsewhere. The Department states these increased costs will likely result in a long-term increase in the wholesale price of eggs on the order of \$.12 to \$.39 per dozen, or \$.01-.03 per egg. The Department states, because demand for eggs is relatively inelastic, some of this will be passed to retailers and, ultimately, to consumers. Assuming that those costs are passed along to the consumers, economists estimate that the rulemaking will reduce consumer surplus by \$4.81 to \$11.05 per Arizona household, per year.

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

The Department believes that the Rulemaking's benefits outweigh the costs to the Department, producers, retailers, and consumers. The Department has considered the alternatives for transitioning to cage-free production and believes this is the least costly and intrusive method for doing so.

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

The Department anticipates that the rulemaking will impact shell egg producers, retailers, restaurants, and consumers.

The Department is responsible for inspecting and enforcing the rulemaking's requirements. Accordingly, the Department anticipates that it will have to employ at least one additional staffer to assist with tacking producer certifications and the associated paperwork. The burden of this inspection and enforcement framework is substantially less burdensome than other alternatives.

Producers will likely see an increase in the production costs, but they will likely be able to pass some of that increase along to retailers and wholesalers, and will benefit from higher egg prices. Producers complying with Arizona's proposed standards can reap the substantial benefit of selling in these states with similarly heightened standards for humaneness, creating a significant incentive to convert their operations.

Retailers can expect an increase in the wholesale costs of eggs in the short and long term. The Seidman Institute concludes, however, that because of shell egg's inelasticity of demand, retailers are unlikely to absorb the entire increase in the costs of production. That conclusion is tempered by the fact that some food chains are already sourcing exclusively cage-free eggs and there is little evidence of an increase in price. Because the retailers will likely pass the costs to the consumer, the Department finds that the benefits of the Rulemaking outweigh the economic costs for retailers and restaurants.

The Department concludes that the animal welfare, food safety, and food supply benefits outweigh the marginal cost increase to consumers

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

The Department indicates it made three substantive changes to the text of the rule published in the Notice of Proposed Rulemaking. The Department states all of the changes are minor and the final rule is not substantially different from the proposed rule contained in the Notice of Proposed Rulemaking. The changes include:

A. Based on the feedback from the public comments the Department has modified R3-2-901 to include a definition for egg products to clarify what is covered by this rule. The definition clarifies that the rule does not apply to cooked eggs.

B. R3-2-907(A) and (B) were modified to cover an unintended gap in dates changed from June 30 to September 30, 2022.

C. The Department modified R3-2-907(H) to allow egg producers more flexibility in evidencing compliance with the rule by allowing alternative language for labeling. The Department believes this small change alleviates some of the burden placed on producers without resulting in greater or additional penalties for violation.

Council staff does not believe these changes creates a “substantial difference” between the proposed rule contained in the Notice of Proposed Rulemaking and the rule contained in the Notice of Final Rulemaking before the Council for consideration pursuant to A.R.S. § 41-1025.

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

The Department indicates it received over 1,700 written comments and fourteen oral comments regarding this rulemaking. Specifically, the Department indicates it received 114 comments opposing and 1659 comments in favor of this rulemaking. The Department has provided summaries of the comments received as well as the Department’s response to those comments in Section 11 of the Preamble. Due to the volume of comments received, original copies of all comments provided by the Department are not included with the final materials for this rulemaking, but are available from Council staff upon request. Council staff believes the agency has adequately addressed the comments on the proposed rules.

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

Not applicable. The Department indicates the rules do not require a permit, license, or agency authorization.

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

Not applicable. The Department indicates there is no corresponding federal law.

11. Conclusion

This regular rulemaking from the Department seeks to amend five (5) rules in Title 3, Chapter 2, Article 9 related to Egg and Egg Products Control. Specifically, the proposed amendments establish updated poultry husbandry standards, including increased minimum floor space requirements for laying hens reducing stocking densities. Additionally, the amendments

establish a transition from traditional caged production methods to cage-free production. The Department states the amendments are intended to represent the best management practices in the shell egg industry that ensure the production of high-quality, cruelty-free eggs. The amendments also reflect market trends, which producers anticipate will shift to cage-free eggs by 2025.

Pursuant to A.R.S. § 41-1032(B), an agency “may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date.” Here, the Department is requesting an effective date of October 1, 2022, to allow sufficient time for companies to comply with the rule. Council staff finds that the Department has provided good cause for a later effective date and that the public interest will not be harmed. Council staff recommends approval of this rulemaking.



Arizona Department of Agriculture

Environmental and Plant Services Division
1688 W. Adams Street, Phoenix, Arizona 85007
P: (602) 542-0994 F: (602) 542-1004

March 14, 2022

Simon Larscheidt, Esq.
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Request for Placement on Agenda - Final Rulemaking A.A.C. Title 3, Chapter 2, Article 9

Dear Ms. Larscheidt:

The Arizona Department of Agriculture is requesting to place a final rulemaking on the Governor's Regulatory Review Council agenda for consideration and discussion. Enclosed with this letter you will find the Arizona Department of Agriculture's (Department) final rulemaking packet for A.A.C. Title 3, Chapter 2, Article 9.

The close of record for the proposed rulemaking occurred on February 09, 2022 following a public hearing for oral comments. During the comment period, following the filing of the proposed rulemaking, the Department received over 1,700 written comments and fourteen oral comments regarding this rulemaking. The comment in favor outweigh the comment opposing the rulemaking greatly. We received 114 comments opposing and 1659 comments in favor of this rulemaking, for any one comment against the rulemaking we received over 16 comment in favor of the rulemaking. Due to the large number of comments, the Department has chosen to categorize and group identical and similar comments for response.

Neutral comments with suggestions to the text of the rule:

The Department received two oral comments from distributors. Both companies were commenting with the identical two concerns. Both distributors asked for clarification for a further definition for egg products to get a clear understanding what the rule covers. The second concern from both companies addressed the labeling

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requirement, they would like more flexibility in labeling of eggs and egg products and for the rule to allow alternate labeling options.

Agency Response: Both concerns were addressed and additional text was added to the rule as described in item 10.

Comments Supporting the Rulemaking:

The Department received an overwhelming support from several egg producers, egg association and supplier companies as well as other Arizona agricultural operations, Arizona's biggest dairy coop, and Cattle association. The Department also received support from Senators that express support and approval of your Proposed Rulemaking for R3-2-907. These regulatory amendments, which build on the Department's existing regulations regarding the poultry husbandry requirements for eggs produced and sold in Arizona, provide an orderly transition from conventional to cage-free egg production for all eggs produced or sold in Arizona. This regulation ensures an adequate and affordable supply of shell eggs and egg products for Arizona consumers into the foreseeable future. The Department received comments from individuals and animal rights groups in support of this rulemaking. The comments addressed, the support for animal welfare and the relative small cost for the producers. The benefit of this rule outweighs the cost to the public and the producers.

Agency Response: The Department appreciates the support given by these companies, organizations, and individuals and agrees that prescribing guidelines for eggs produced and sold in the state takes steps to ensure the welfare of egg-laying hens and ensures that local producers are competitive in the marketplace as well.

Comments Opposing the Rulemaking:

The prevailing sentiment in comments of opposition is statutory. Let the market decide.

Comments were received that the Department doesn't have the authority to promulgate rules for animal husbandry standards. One comment by an animal right group stated the exemptions for producers with less than twenty thousand hens are too broad and the rule should not exempt those producers. Statute exempts producers with less than twenty thousand hens.

One organization raised the concern about the availability of eggs in the state when this rule would be in effect.

Agency Response:

The Department has a brought responsibility to set and implement animal husbandry standards A.R.S. 3-710J. The director shall adopt rules for poultry husbandry and the production of eggs sold in this state.

Request for Placement on Agenda

This rule ensures that enough time is provided to producers to make changes to their operations and to convert to cage free production.

This rulemaking activity is not in relation to a five-year review report. The rulemaking does establish fees for service provided. The rulemaking does not contain any fee increases. A list of studies conducted related to the rulemaking is included in the rulemaking packet. No additional employees are necessary to implement and enforce the changes to the rules. The effective date is October 1, 2022 to allow sufficient time for companies to comply with the rule.

Enclosed with this letter is:

- NFR
- EIS
- Current rules and Statutes
- Request and approval from the Governor's Office (exemption from rule moratorium)
- Final Approval from the Governor's Office to submit to GRRC
- Agency responses to comments
- Public comments

Please contact Roland Mader at (602) 542-0884 or rmader@azda.gov with any questions about this rulemaking.

Sincerely,



Mark Killian

Director

cc: Jerome Rosa, Associate Director

Roland Mader, Administrator Dairy and Egg Programs

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

PREAMBLE

1. Article, Part, or Section Affected Rulemaking Action

R3-2-901	Amend
R3-2-903	Amend
R3-2-905	Amend
R3-2-906	Amend
R3-2-907	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. § 3-107
Implementing statute: A.R.S. § 3-710

3. The effective date of the rule:

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 effective date is October 1, 2022 to allow sufficient time for companies to comply with the rule.

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: Vol. 28, Issue 1 A.A.R. Pg. 123, January 7, 2022; and

Notice of Proposed Rulemaking: Vol. 28, Issue 1 A.A.R. Pg. 5, January 7, 2022

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

Name: Roland Mader
Address: 1688 W. Adams St., Phoenix, AZ 85007
Telephone: (602) 542-0884
Fax: (602) 542-4194
E-mail: rmader@azda.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 § 3-710(J) gives the Arizona Department of Agriculture (the "Department") the express authority to regulate "poultry husbandry" for eggs produced and sold in Arizona. See A.R.S. § 3-710(J). "Poultry husbandry" includes the facility systems and spacing requirements. The Department previously adopted the United Egg Producers (UEP) Animal Husbandry Guidelines as the production standards in Arizona. See Notice of Final Rulemaking, Vol. 15, Issue 22 A.A.R., Pg. 863, May 29, 2009. The amendments establish updated poultry husbandry standards, including increased minimum floor space requirements for laying hens reducing stocking densities. Additionally, and in light of the public's growing concerns about animal welfare, including the hens' ability to move freely and express their natural behaviors, the amendments establish a transition from traditional caged production methods to cage-free production.

Under the proposed amendments, all caged egg-laying hens in the state shall be required to be raised according to the United Egg Producers (“UEP”) Animal Husbandry Guidelines until September 30, 2022. From October 1, 2022, until December 31, 2024, all eggs sold in the state must come from laying hens raised according to the UEP Animal Husbandry Guidelines and housed in a cage with at least one square foot of usable floor space per laying hen. From January 1, 2025, forward, all laying hens in the state must be housed in a cage-free manner, and all eggs sold in the state must come from hens housed in a cage-free manner. An exemption would be made for egg producers whose operation has fewer than 20,000 egg-producing hens. The amendments are intended to represent the best management practices in the shell egg industry that ensure the production of high-quality, cruelty-free eggs. The amendments also reflect market trends, which producers anticipate will shift to cage-free eggs by 2025. The Department crafted this regulation to minimize its regulatory burden. The rule anticipates using specific certifications to ensure that out- of state producers have no additional burden or advantage over in-state producers.

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

- A. Augustine, C. and Peterson S., “An Assessment of the Economic Impacts of the Prevention of Farm Animal Cruelty Act.” (January 31, 2016) (Available at: <https://www.humanesociety.org/sites/default/files/docs/2016-cl-white-paper-cfap.pdf>).
- B. Brannan, K.E. and Anderson, K.E., “Examination of the impact of range, cage-free, modified systems, and conventional cage environments on the labor inputs committed to bird care for three brown egg layer strains.” *Journal of Applied Poultry Research*, Volume 30, Issue 1 (2021).
- C. Bell, D.(2006). A Review of Recent Publications on Animal Welfare Issues for Table Egg Laying Hens. University of California, Riverside.
- D. Carman, H, (2012). “Economic Aspects of Alternative California Egg Production Systems.” Paper prepared for The Association of California Egg Farmers, August 30, 2012.
- E. Carter, CA, Schaefer, KA, and Scheitrum, D, (2020). “Piecemeal Farm Regulation and the U.S. Commerce Clause.” *American Journal of Agricultural Economics*, Vol. 103(3), pp 1141–1163.
- F. Chang, Jae Bong, et al. (2010). “The Price of Happy Hens: A Hedonic Analysis of Retail Egg Prices.” *Journal of Agricultural and Resource Economics*, vol. 35, no. 3, Western Agricultural Economics Association, 2010, pp. 406–23, <http://www.jstor.org/stable/23243063>.
- G. Clements, Mark (2022). “The World’s Top 10 Egg Producers.” *WATTPoultry International*, Volume 61, Number 2, page 5 (available at https://www.poultryinternationaldigital.com/poultryinternational/february_2022/MobilePagedReplica.action?pm=2&folio=4#pg8).
- H. Declaration Of Devrim Ikizler.
- I. European Food Safety Authority. 2007. Report of the Task Force on Zoonoses Data Collection on the Analysis of the baseline study on the prevalence of Salmonella in holdings of laying hen flocks of Gallus gallus. The EFSA Journal 97. Available at <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2007.97r>. Last accessed February 14, 2022.
- J. Geng, A. L., Liu, H. G., Zhang, Y., Zhang, J., Wang, H. H., Chu, Q., & Yan, Z. X. (2020). Effects of indoor stocking density on performance, egg quality, and welfare status of a native chicken during 22 to 38 weeks. *Poultry Science*, 99(1),163-171.
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8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

The rulemaking does not diminish any previous authority of a political subdivision of this state.

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

Over the past decade, alternative production systems have increased in the commercial table egg industry. Increased pressure from consumers and retailers concerned about the welfare of the laying hens in caged housing environments, including the inability to move around and express natural behaviors, are the primary drivers of this change. These animal welfare concerns have prompted most food retailers and restaurants to pledge that, by 2025, they will only purchase and sell cage-free eggs. Similarly, surrounding states, including California, Utah, Colorado, Nevada, Oregon, and Washington, have passed legislation requiring that all eggs produced or sold in their states come from chickens raised using cage-free production methods in the next 1-5 years.

Interest groups also filed a ballot initiative in Arizona, Ballot Initiative I-01-2022 (the “Initiative”), requiring (among other things) that all eggs produced or sold in Arizona after May 1, 2023, come from hens housed in cage-free production environments. Given the success of recent animal welfare ballot initiatives in Arizona and elsewhere, this Initiative presents a probably regulatory alternative. Thus, when deciding whether to pursue the rulemaking, the Department considered – among the many other relevant factors – the Initiative’s potential economic effects on the state.

The transition to cage-free housing will increase the costs of production as compared to conventional caged production systems. Labor inputs, which comprise about five to seven percent of the costs of egg production, could increase as much as 41%. The economic studies forecast that the cost differential between cage free and conventional production is somewhere between \$.01 per egg, to just over \$.02 per egg. Experts also forecast that the cage free conversion will result in a long-run wholesale price increase of \$.39 per dozen, or \$.0325 per egg. Thus, producers can expect to recoup some of their costs through increased wholesale prices to retailers, etc. Retailers will likely pass some of the increased costs to consumers.

The transition to cage-free will increase producer’s capital expenditures and the costs of facilities and equipment. One in-state producer estimates that it will have to invest hundreds of millions of dollars into converting its existing production facilities to cage-free. These construction activities will create jobs and benefit the local economy. Importantly, because the transition from conventional caged egg production to cage-free production requires the investment of significant capital, to minimize the burden on small businesses, the Department excluded from the rulemaking all operations that house under 20,000 laying hens. Therefore, the proposed rulemaking will have little, if any, impact on small businesses within Arizona.

The Department estimates that the rulemaking will increase consumer egg costs between \$2.71 and \$8.79 per-person, per year. According to USDA WASDE data, the average yearly egg consumption for the years 2010-2021 is 270.675 eggs per year per person. If the average person eats 270.675 eggs per year, and the increased costs of cage-free eggs are between 1 and 3.25 cents per egg, then the estimated annual economic impact per consumer is between \$2.71 and \$8.79 per year. Economists further predict that the Rulemaking will reduce consumer surplus by \$4.81 to \$11.05 per Arizona household (2.2 persons), per year. Considering that the average U.S. consumer spent \$7,316.00 on food per year in 2019-2020, that is less than a one-tenth of a percent increase in the costs of their overall food expenditures.

Recent economic reports also indicate that eggs at retail outlets are currently trending 29% higher than the previous year. This suggests that retailers and brokers have a greater impact on the cost of eggs to consumers than the actual costs of producing the eggs. It further suggests that retailers may be able to absorb some of the costs to maintain demand. Thus, the transition from conventional to cage-free egg production will have little effect on Arizona consumers.

Another important difference between the proposed rulemaking and the Initiative is timing. Forcing Arizona to transition to cage-free eggs by May 1, 2023, creates significant concerns about the adequacy of the cage-free egg supply. For

example, Hickman's Egg Ranch informs the Department that it cannot convert the remainder of its production facilities to cage-free housing by May 31, 2023, as required by the Initiative, and may have to euthanize a portion of its flock to avoid criminal penalties if the Initiative passes. Moreover, as noted above, other states that are "net importers" of shell eggs are converting to cage free in the next three to four years, and Arizona will be competing with consumers from those states. Accordingly, the Department believes it is important to work with producers and give them sufficient time to convert their production and meet the consumer demands for cage-free eggs. The proposed rulemaking gives egg producers additional time to convert their operations to cage-free production.

As compared to the Initiative, the rulemaking's regulatory scheme will significantly reduce the Department's regulatory costs. The Initiative charges the Department with enforcing cage-free requirements but precludes the use of any third-party inspection processes. Thus, the Department would need to send inspectors to inspect producers outside Arizona, requiring the Department to hire additional egg inspectors and significantly increasing inspection costs. On the other hand, the rulemaking enables the Department to rely on third party certifications, including USDA certifications, to ensure producers are compliant. This will modestly increase inspection costs for producers, but will reduce the Department's regulatory burden.

On balance, the Department believes the benefits to public and animal welfare, outweigh the potential economic costs of the rule. The increased costs per consumer represent a small portion of their food budget. Moreover, there is a distinct possibility that voters could pass an initiative either through customer demands or the Initiative, the costs to the producers and the public are driven by the market, not by the regulatory process. The proposed rulemaking gives producers the certainty and time to plan for and execute the transition at less cost. There are no less intrusive or less costly methods of achieving the rulemaking's objectives, and its benefits to Arizona agriculture outweigh any costs.

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

The Department made three substantive changes to the text of the rule published in the Notice of Proposed Rulemaking. All of the changes are minor and the final rule is not substantially different from the proposed rule contained in the Notice of Proposed Rule Making. The changes are:

- A. Based on the feedback from the public comments the Department has modified R3-2-901 to include a definition for egg products to clarify what is covered by this rule. The definition clarifies that the rule does not apply to cooked eggs.
- B. R3-2-907 (A.) and (B.) was modified to cover an unintended gap in dates changed from June 30 to September 30, 2022.
- C. The Department modified R3-2-907 (H) to allow egg producers more flexibility in evidencing compliance with the rule by allowing alternative language for labeling. The Department believes this small change alleviates some of the burden placed on producers without resulting in greater or additional penalties for violation.

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

The Department received over 1,700 written comments and fourteen oral comments regarding this rulemaking. The comment in favor outweigh the comment opposing the rulemaking greatly. We received 114 comments opposing and 1659 comments in favor of this rulemaking, for any one comment against the rulemaking we received over 16 comment in favor of the rulemaking. Due to the large number of comments, the Department has chosen to categorize and group identical and similar comments for response.

Neutral comments with suggestions to the text of the rule:

The Department received two oral comments from distributors. Both companies were commenting with the identical two concerns. Both distributors asked for clarification for a further definition for egg products to get a clear understanding what the rule covers. The second concern from both companies addressed the labeling requirement, they would like more flexibility in labeling of eggs and egg products and for the rule to allow alternate labeling options.

Agency Response: Both concerns were addressed and additional text was added to the rule as described in item 10.

Comments Supporting the Rulemaking:

The Department received an overwhelming support from several egg producers, egg association and supplier companies as well as other Arizona agricultural operations, Arizona's biggest dairy coop, and Cattle association. The Department also received support from Senators that express support and approval of your Proposed Rulemaking for R3-2-907. These regulatory amendments, which build on the Department's existing regulations regarding the poultry husbandry requirements for eggs produced and sold in Arizona, provide an orderly transition from conventional to cage-free egg production for all eggs produced or sold in Arizona. This regulation ensures an adequate and affordable supply of shell eggs and egg products for Arizona consumers into the foreseeable future. The Department received comments from individuals and animal rights groups in support of this rulemaking. The comments addressed, the support for animal

welfare and the relative small cost for the producers. The benefit of this rule outweighs the cost to the public and the producers.

Agency Response: The Department appreciates the support given by these companies, organizations, and individuals and agrees that prescribing guidelines for eggs produced and sold in the state takes steps to ensure the welfare of egg-laying hens and ensures that local producers are competitive in the marketplace as well.

Comments Opposing the Rulemaking:

The prevailing sentiment in comments of opposition is statutory. Let the market decide.

Comments were received that the Department doesn't have the authority to promulgate rules for animal husbandry standards. One comment by an animal right group stated the exemptions for producers with less than twenty thousand hens are too broad and the rule should not exempt those producers. Statute exempts producers with less than twenty thousand hens.

One organization raised the concern about the availability of eggs in the state when this rule would be in effect.

Agency Response:

The Department has a brought responsibility to set and implement animal husbandry standards A.R.S. 3-710J. The director shall adopt rules for poultry husbandry and the production of eggs sold in this state.

This rule ensures that enough time is provided to producers to make changes to their operations and to convert to cage free production.

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:

Not applicable.

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

Not applicable.

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

No analysis was conducted.

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

The rule incorporates the following standards:

- A. "United Egg Producers Animal Husbandry Guidelines" means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition, defined in R3-2-901, and referred to in R3-2-907.
- B. The 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing, referred to in R3-2-907.

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 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

ARTICLE 9. EGGS AND EGG PRODUCTS CONTROL

Section

R3-2-901. Definitions

R3-2-903. Sampling: Schedule and Methods for Evidence

R3-2-905. Inspection Fee Rate

R3-2-906. Violations and Penalties

R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

R3-2-901. Definitions and Interpretation Guidance

A. In addition to the definitions provided in A.R.S. §§ 3-701, 3-703 and 3-704, the following shall apply to this Article:

1. “Business owner or operator” means any person who owns ten percent or more of a business, or a person who controls the operations of a business.
2. “Check” means an individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A “check” is considered to be lower in quality than a “dirty.”
3. “Dirty” means a shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.
4. “Egg-laying hen” means any hen that produces eggs for human consumption.
5. “Egg products”
 - (a) Means eggs, in raw or pasteurized form, that are removed from the shell in a liquid, frozen, dried, or freeze-dried state, but are not fully cooked.
 - (b) May consist of whole eggs, yolks, whites, or any blend of yolk and white, with or without additives, if eggs are the main ingredient.
6. “Housed in a cage-free manner” means confined in a housing system that provides egg-laying hens with all of the following:
 - a. The amount of usable floor space per egg-laying hen equal to or greater than that required by the 2017 edition of the United Egg Producers’ Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing.
 - b. An indoor or outdoor controlled environment, which can consist of multi-tiered aviaries, partially-slatted systems, single-level all litter floor systems, or other systems, and which allows egg-laying hens to have:
 - (1) unrestricted freedom to roam;
 - (2) an environment that allows them to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas; and
 - (3) an environment in which farm employees can provide care while standing within the hens’ usable floor space.
7. “Leaker” means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.
8. “Lot” means any quantity of two or more eggs.

9. “Lot Consolidation” means the removal of damaged eggs from cartons labeled by a producer or producer dealer and replacement of the damaged eggs with eggs of the same grade, size, brand, expiration date and source.
10. “Multi-tiered aviaries” means cage-free housing systems in which egg-laying hens have unfettered access to multiple elevated flat platforms that provide the egg-laying hens with usable floor space both on top of and underneath the platforms.
11. “Partially-slatted systems” means cage-free housing systems in which egg-laying hens have unfettered access to elevated flat platforms under which manure drops through the flooring to a pit or litter removal belt below.
12. “Pasteurized in-shell eggs” means eggs that have been pasteurized with the shell intact by any method approved by the Federal Food and Drug Administration or the department.
13. “Repacking” means changing the identity of a lot of eggs by removing them from the original container labeled by a packer and placing them into another container not labeled by the packer at the point of origin with the same grade, size, lot number, source and/or brand.
14. “Single-level all-litter floor systems” means cage-free housing systems bedded with litter, in which egg-laying hens have limited or no access to elevated flat platforms.
15. “Spot-check” sample means any sample less than a representative sample described in the chart in R3-2-903(B).
16. “Ultimate consumer” means a person consuming eggs or egg products and a restaurant using eggs in the preparation of a meal.
17. “Usable floor space” means the total square footage of floor space provided to each egg-laying hen, as calculated by dividing the total square footage of floor space provided to the egg-laying hens in an enclosure by the number of egg-laying hens in that enclosure. “Usable floor space” shall include both ground space and elevated level flat platforms upon which hens can roost, but shall not include perches or ramps.
18. “UEP” means United Egg Producers.
19. “United Egg Producers Animal Husbandry Guidelines” means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition. This material is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007, or the United Egg Producers at 1720 Windward Concourse, Ste. 230, Alpharetta, GA 30005.
20. “United Egg Producers Certified” means a company that has achieved United Egg Producers Certified status pursuant to the requirements prescribed by the United Egg Producers Animal Husbandry Guidelines.
21. “United Egg Producers Certified logo” means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.
22. “United Egg Producers Cage Free Certified logo” means the official symbol and accompanying language used to identify cage-free eggs produced by United Egg Producers Certified companies.
- B.** Wherever appropriate, and if not expressly indicated, words in the singular form shall be construed to include the plural and vice versa. Nouns and pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.
- C.** Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.
- D.** The word “includes” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions.

R3-2-903. Sampling: Schedule and Methods for Evidence

- A. An inspector may conduct random spot-check sampling of a lot of eggs to determine whether the lot meets minimum quality and weight standards and is in compliance with R3-2-907(B).

B. Representative egg sampling, under A.R.S. § 3-710(G), shall be based on Table II. A lot that does not meet minimum quality or weight standards or is not in compliance with R3-2-907(B) shall receive a warning notice hold tag.

1. An inspector may draw additional samples to determine whether the lot meets the minimum requirements.
2. When loose eggs are out of the case, the sample shall be based on a carton.
3. Eggs shall be sampled on a 30-dozen-case basis. When eggs are packed in other lot quantities, an inspector shall convert the quantity of eggs to the equivalent 30-dozen-case basis to establish the official sample size.

R3-2-905. Inspection Fee Rate

A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).

B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).

C. For scheduled continuous grading, certification, and inspection services. The following rates apply to continuous grading service on a resident basis and continuous grading service on a nonresident basis per grader:

1. Regular rate: _ \$38.00/hour
2. Overtime rate: _ \$57.00/hour
3. Holiday rate: _ \$58.00/hour

D. For plant survey, unscheduled temporary, certification, auditing and appeal grading services. The following rates apply to temporary and auditing service per grader:

1. Regular rate: _ \$57.00/hour
2. Overtime rate: _ \$85.00/hour
3. Holiday rate: _ \$87.00/hour

R3-2-906. Violations and Penalties

A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:

1. Category A:
 - a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
 - b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
 - c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
 - d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container. Selling pasteurized in-shell eggs without or past the "Best By" or "Use by" date;
 - e. Failing to maintain records and reports required by this Article;
 - f. Failing to label a carton, case, or container with one size, one grade, one brand name, or, if applicable as required under R3-2-907(B), the United Egg Producer Certified logo;
 - g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
 - h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or

- i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products;
 - j. Selling eggs that have not been produced in accordance with the standards prescribed under R3-2-907~~(B)~~;
 - k. Failing to raise egg-laying hens in this state in accordance with the standards prescribed under R3-2-907~~(A)~~.
2. Category B:
- a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(13); or
 - b. Advertising, representing, or selling out-of-state eggs as local eggs.
3. Category C:
- a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
 - b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower;
 - c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F; or
 - d. Failing to meet the sanitary standards egg processing of R3-2-908.
- B. Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.
- C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is in Table III.

R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

- A. Until September 30, 2022, all egg-laying hens in this state shall be raised according to ~~United Egg Producers~~UEP Animal Husbandry Guidelines.
- B. Until September 30, 2022, all eggs sold in this state produced by hens shall be from hens raised according to the ~~United Egg Producers~~UEP Animal Husbandry Guidelines. All eggs shall display the ~~United Egg Producers~~UEP Certified logo on their cases, cartons, and containers, or the egg dealer shall annually provide the Department with a copy of a current independent third-party audit that demonstrates that the eggs were produced by hens raised according to UEP Animal Husbandry Guidelines.
- C. Beginning October 1, 2022, all egg-laying hens in this state shall be housed in accordance with the UEP Animal Husbandry Guidelines and shall be provided with no less than one square foot of usable floor space per egg-laying hen.
- D. Beginning October 1, 2022, all eggs and egg products sold in this state shall be from hens that are housed in accordance with the UEP Animal Husbandry Guidelines and provided with no less than one square foot of usable floor space per egg-laying hen.
- E. Beginning no later than January 1, 2025, all egg-laying hens in this state shall be housed in a cage-free manner.
- F. Beginning no later than January 1, 2025, all eggs and egg products sold in this state shall be from hens housed in a cage-free manner.
- G. Subsections (A) ~~and (B)~~ through (E) of this rule do not apply to egg producers or business owners or operators operating or controlling the operation of one or more egg ranches each having fewer than 20,000 egg-laying hens producing eggs. Subsections (A) ~~and (B)~~ through (E) of this rule also do not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.

H. Beginning no later than October 1, 2022, in order to sell eggs or egg products within the state, a business owner or operator must have a certificate from the Supervisor certifying that the eggs or egg products are produced in compliance with Subsections subsections (C) through (F), or are exempt under subsection (G). The Supervisor will certify that eggs and egg products are produced in compliance with subsections (C) through (G) if the eggs or egg products are accompanied by documentation from a government or private third-party inspection and continuous process verification service that the Supervisor deems acceptable establishing that the eggs or egg products were produced in compliance with this Section. The immediate container of eggs and egg products shall be plainly and conspicuously marked with the words “ARS 710J” in bold-faced type not less than one-eighth inch in height; or in another manner pre-approved by the department.

I. It shall be a defense to any action to enforce this Rule that a business owner or operator relied in good faith upon a written certification by the supplier that the eggs or egg products at issue were derived from an egg-laying hen which was housed in compliance with this Section.

DJ. All producers and producer dealers with operations within the state shall have a written biosecurity plan in place. At a minimum each producer and producer dealer shall:

1. Restrict access to all areas where poultry are housed or kept.
2. Take steps to ensure that contaminated material is not transported into any poultry barns.
3. Cover and secure feed in a manner that prevents wild bird, rodents or other animals from accessing the feed.
4. Cover and properly contain poultry carcasses, used litter, or other disease-containing organic materials that prevents wild birds, rodents or other animals from accessing the material and movement of the materials by the wind.
5. Keep houses in good repair and all areas to which the birds have access should be kept free of materials hazardous to the birds.

EK. The biosecurity plan shall contain the following:

1. Methods for the disposal and handling of poultry manure.
2. Procedures for prevention, control and eradication of vectors for poultry diseases.
3. Procedures for the detection, control and treatment of poultry diseases.
4. Methods for the disposal and handling of culled birds and entire flocks under normal cyclic operations and following emergency depletion as a result of disease.
5. A facility poultry disease control and prevention plan which includes standard operating procedures with respect to specific measures to control and prevent disease including but not limited to structural and operational disease control and prevention provisions.
6. Procedures to prevent cross contamination between nest run and in line eggs.
7. Procedures to prevent the introduction and transmittal of diseases by vehicles and any other forms of transportation.
8. Signed agreements with all employees containing biosecurity procedures regarding contact with outside poultry and wild birds.

FL. A producer and producer dealer shall allow the Department to enter the premises during normal working hours to inspect the biosecurity plan documents and the biosecurity that is implemented.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 3. AGRICULTURE CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

1. Identification of the proposed rulemaking.

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

From October 1, 2022, until December 31, 2024, all egg-laying hens in the state and all eggs sold in the state must come from laying hens raised according to the UEP Animal Husbandry Guidelines and must be housed in a cage with at least one square foot of usable floor space per laying hen. From January 1, 2025 forward, all laying hens in the state must be housed in a cage-free manner, and all eggs sold in the state must come from hens housed in a cage-free manner.

B. The harm resulting from the conduct the rule is designed to change.

Over the past decade, alternative production systems have increased in the commercial egg industry. The Rulemaking is intended to stop the use of conventional caged production systems and replace them with cage-free aviary production systems. While increased pressure from consumers and retailers are the primary drivers of this change,¹ “[t]he scientific evidence clearly favors the notion that hen well-being is higher in cage-free production systems than in the typical cage system”² The net effect of this Rulemaking is to decrease stocking densities and improve hen welfare by enabling them to exhibit their natural behaviors. Even if the welfare benefit to the hens is more an incident of public perception, it still benefit for the public welfare. And reducing stocking densities has been shown to decrease salmonella rates in layers, another benefit to consumers.

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

This would regulate all wholesale and retail sales of eggs and egg products in Arizona.

¹ Brannan, K.E. and Anderson, K.E., “Examination of the impact of range, cage-free, modified systems, and conventional cage environments on the labor inputs committed to bird care for three brown egg layer strains,” *Journal of Applied Poultry Research*, Volume 30, Issue 1 (2021).

² Chang, Jae Bong, et al. “The Price of Happy Hens: A Hedonic Analysis of Retail Egg Prices.” *Journal of Agricultural and Resource Economics*, vol. 35, no. 3, Western Agricultural Economics Association, 2010, pp. 406–23, <http://www.jstor.org/stable/23243063>.

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

The following economic, small business, and consumer impact statement concludes that the Rulemaking's benefits outweigh the costs to the Department, producers, retailers, and consumers. The Rulemaking and the transition to cage-free production will increase producers' production costs, in Arizona and elsewhere. These increased costs will likely result in a long-term increase in the wholesale price of eggs on the order of \$.12 to \$.39 per dozen, or \$.01-.03 per egg. Because demand for eggs is relatively inelastic, some of this will be passed to retailers and, ultimately, to consumers. Assuming that those costs are passed along to the consumers, economists estimate that the Rulemaking will reduce consumer surplus by \$4.81 to \$11.05 per Arizona household, per year.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name:	Roland Mader
Address:	Arizona Department of Agriculture 1688 W. Adams St. Phoenix, AZ 85007
Telephone:	(602) 542-0884
Fax:	(602) 542-4194
E-mail:	rmader@azda.gov

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

The rulemaking directly impact shell egg production methods. Accordingly, it directly impacts producers with more than 20,000 hens in one location, retailers, restaurants, and food products producers purchasing wholesale shell eggs from egg producers, and retail consumers. More specifically, the rulemaking may have the effect of increasing producer costs, increasing the wholesale price of eggs sold because of those increased costs, and ultimately increasing the

retail costs of shell eggs to consumers. However, the increase in wholesale and retail prices will also benefit producers and retailers selling cage free eggs. Consumers will also benefit from a more stable supply of eggs, as opposed to other potential alternatives, and will benefit from the increased welfare of the hens producing their food.

5. Cost-benefit analysis of the rule:

A. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Department is responsible for inspecting and enforcing the rulemaking's requirements. Accordingly, the Department anticipates that it will have to employ at least one additional staffer to assist with tracking producer certifications and the associated paperwork. Outside of the addition of this person to maintain the database, the Department does not anticipate any additional costs, as it already inspects shell eggs coming to Arizona to ensure they meet the current regulatory requirements.

The burden of this inspection and enforcement framework is substantially less burdensome than other alternatives. For example, a ballot initiative filed in 2021 would require charge the Department with enforcing cage-free requirements but preclude the use of any third-party inspection processes. In other words, the Department would need to send inspectors to inspect producers outside Arizona. This would require the Department to hire additional egg inspectors and would significantly increase the costs of each inspection.

B. Costs and benefits to political subdivisions directly affected by the rulemaking:

Not applicable.

C. Costs and benefits to businesses directly affected by the rulemaking:

As noted in the summary above, the Department anticipates that the rulemaking will impact shell egg producers, retailers, restaurants, and consumers. Each will be impacted in different ways. The following explains the costs and benefits to these stakeholders.

i. The costs and benefits to producers:

For example, Sumner et al. (2008) estimate production costs to be about \$0.31/dozen higher in cage-free vs. cage production systems at farm level, which translates to 2.6 cents per

egg in 2008.³ Carter et al (2020) estimate that California's cage-free regulations will generate a long-run egg price increase of 39 cents per dozen cage free eggs at wholesale.⁴ A recent study collecting sources indicated that economic studies analyzing the impact of cage-free housing estimated the cost to be around 1.6 to 2 cents per egg, or \$2.93 per year.⁵ Sumner, Rosen-Molina, and Matthews (2008) estimate that cage-free egg production costs will be at least 20% higher than conventional egg production costs (before considering capital expenditures to retrofit housing).⁶ WattAg, a leading industry publication, noted that producers reported that the differential for producing cage-free eggs, as opposed to caged eggs, is only \$0.25-0.35 per dozen.⁷ Four peer-reviewed, academic studies provide estimates of the cost differential between cage and cage-free housing systems to be between roughly 2.5 cents to less than a penny per egg.⁸ That is an average of \$.019 per egg, or \$.23 per dozen, and a median of just over \$.0204 per egg.

The primary cost drivers are the costs of conversion and the additional labor and feed inputs for cage free production. For example, the Rulemaking will likely force Hickman's and

³ Sumner, D. A., J. T. Rosen-Molina, W. A. Matthews, J. A. Mench, and K. R. Richter. "Economic Effects of Proposed Restrictions on Egg-Laying Hen Housing in California." University of California Agricultural Issues Center Report, July 2008.

⁴ Carter, CA, Schaefer, KA, and Scheitrum, D, (2020). Piecemeal Farm Regulation and the U.S. Commerce Clause. *American Journal of Agricultural Economics*, Vol. 103(3), pp 1141–1163.

⁵ Augustine, C. and Peterson S., "An Assessment of the Economic Impacts of the Prevention of Farm Animal Cruelty Act", January 31, 2016 <<https://www.humanesociety.org/sites/default/files/docs/2016-cl-white-paper-cfap.pdf>>.

⁶ Source: Sumner, DA, Rosen-Molina, JT, and Matthews, WA, (2008). Economic Effects of Proposed Restrictions Egg-Laying Hen Housing in California. Working paper, Agricultural Issues Center, University of California, Davis, 2008.

⁷ O'Keefe, T, (2019). US Consumers Not Sold on Cage-Free Eggs. *WattPoultry.com*. <https://www.wattagnet.com/blogs/14-food-safety-and-processing-perspective/post/38931-us-consumers-not-sold-on-cage-free-eggs>

⁸ Bell, D.(2006). A Review of Recent Publications on Animal Welfare Issues for Table Egg Laying Hens. University of California, Riverside; Carman, H, (2012). Economic Aspects of Alternative California Egg Production Systems, prepared for The Association of California Egg Farmers, August 30, 2012. Matthews, WA., and Sumner, DA, (2015). Effects of Housing System on the Costs of Commercial Egg Production. *Poultry Science* Volume 94, Number 3 (2015): 552-557; Sumner, DA, et al., (2011). Economic and Market Issues on the Sustainability of Egg Production in the United States: Analysis of Alternative Production Systems . *Poultry Science* Volume 90, Number 1 (2011): 241-250.

other producers to hire additional employees to staff to patrol its production facilities, which is a benefit to the state and local communities. The Siedman Research institute reports that the total loss in producer surplus could range from \$8 million to \$15.9 million each year.⁹ Although producers will likely see an increase in the production costs, they will likely be able to pass some of that increase along to retailers and wholesalers, and will benefit from higher egg prices.

Like the situation the Department faced in 2008, the transition to greater per-hen floor space requirements and cage-free production may cause some egg producers to exit the Arizona market because they find it uneconomic to adapt their facilities to comply with the new requirements. However, the potential for this happening is significantly reduced by the fact that California, Washington, Oregon, Nevada, Colorado, and Utah have already passed legislation requiring that all eggs produced or sold in those states come from cage-free production by 2025. Thus, producers complying with Arizona's proposed standards can also reap the substantial benefit of selling in these states with similarly heightened standards for humaneness, creating a significant incentive to convert their operations.

ii. The costs and benefits to retailers and restaurants:

As noted above, retailers can expect an increase in the wholesale costs of eggs in the short and long term. The Seidman Institute concludes, however, that because of shell egg's inelasticity of demand, retailers are unlikely to absorb the entire increase in the costs of production. That conclusion is tempered by the fact that some food chains are already sourcing exclusively cage-free eggs and there is little evidence of an increase in price. Because the retailers will likely pass the costs to consumer, the Department finds that the benefits of the Rulemaking outweigh the economic costs for retailers and restaurants.

This conclusion is bolstered by the fact that many retailers and restaurants have already pledged to transition to cage-free eggs by 2025, including but not limited to:

1. Albertson's/Safeway;
2. Aldi (2025);
3. Aramark Corp (2020);

⁹Siedman Research Institute. Economic Insights on the Move to Cage Free Egg Production in Arizona (February 7, 2022).

4. Bashas’;
5. Chipotle;
6. Costco;
7. CVS;
8. H-E-B Grocery;
9. Hormel Foods;
10. Kroger;
11. McDonalds;
12. Sam’s Club;
13. Target;
14. Trader Joes; and
15. Wal-Mart.

If these entities are willing to make public pledges to their customers, then it is likely that they also found that the benefits of cage-free production outweigh their costs.

6. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

The costs and benefits to the Department are detailed supra, Section 5.A. Outside of the Department, implementing and enforcing the Rulemaking does not affect any other political subdivisions.

7. Impact on “small businesses”:

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

There will not be any small businesses¹⁰ that will be directly impacted by the regulation. For producers, the regulation only impacts commercial egg producers with over 20,000 laying hens that sell eggs into Arizona. Both of the Arizona shell egg producers are large companies. Hickman’s Family Farms employs over 650 people in Arizona and California, and has over 5.7

¹⁰ The phrase “small business” has the same meaning specified in A.R.S. § 41-1001(23), which generally means “a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.”

million layers in Arizona. Rose Acres Farms has over 27.6 million layers and is the third largest egg producer in the World.¹¹ Moreover, because the top 20 egg producers control 73% of the market share and the 20th largest producer has 5.3 million layers, it is unlikely that any of the other egg producers selling eggs into Arizona are small businesses.¹² Retail grocers selling eggs are also unlikely to be considered small businesses.

The Rulemaking may have a modest impact some smaller retailers and restaurants purchasing shell eggs for resale or as ingredients. They will have to bear the increased wholesale prices, which could be somewhere between \$.12 and \$.39 per dozen. *See, supra*, Section 5.C.1. As noted previously, however, economic information that commenters provided the Department during the comment period indicates that because the demand for eggs is relatively inelastic, wholesalers and retailers can pass the increased production costs to consumers. Section 5.C.ii.

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

Because the only small businesses that may potentially be impacted by the Rulemaking are small retailers and restaurants, they will merely be required to source cage-free eggs. There will be no additional administrative costs for these entities.

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

To avoid the impact on small businesses, the Department elected to continue the prior exemption for producers “controlling the operation of one or more egg ranches each having fewer than 20,000 egg-laying hens producing eggs.” In accordance with A.R.S. § 41-1035(5), this Rulemaking exempts small business from regulation.

¹¹ (Clements, Mark (2022). “The World’s Top 10 Egg Producers.” WATTPoultry International, Volume 61, Number 2, page 5 (available at https://www.poultryinternational-digital.com/poultryinternational/february_2022/MobilePagedReplica.action?pm=2&folio=4#pg8.)

¹² (O’Keefe, Terrence (2021). “Ranking the largest US egg-producing companies in 2021.” Egg Industry, Volume 126, Number 1, page 6 (available at https://www.eggindustry-digital.com/eggindustry/january_2021/MobilePagedReplica.action?utm_source=Omeda&utm_medium=Email&utm_content=DE-Egg+Industry&utm_campaign=DE-Egg+Industry_20210129_1300&oly_enc_id=4891F5381367F2Y&pm=2&folio=8#pg10.)

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

According to an economic expert submitted by one commenter, there is a substantial and unmet demand for “humanely-produced” eggs and egg products. He notes that in a 2014 Consumer Reports survey, 80% of respondents considered better living conditions for farm animals to be important or very important.¹³ According to the same expert, “Wal-Mart’s own research showed that ‘77 percent of its shoppers said they will increase their trust and 66 percent will increase their likelihood to shop at a retailer that improves the treatment of livestock.’”¹⁴ Even the North American Meat institute noted the importance of humanely-raised food to consumers. Animal welfare is such a concern for consumer that a 2010 research study conducted by Chang et al., American consumers were found willing to pay up to 57% more for cage-free eggs on average.¹⁵ Accordingly, the transition to cage-free production benefits all of those consumers concerned about the humane and ethical treatment of the animals producing the food they consume.

Another benefit to consumers comes in the form of food safety. The proposed rulemaking decreases the stocking densities for laying hens producing eggs sold in Arizona. Studies show that stocking densities do have an inverse impact on layer welfare: the higher the stocking density, the greater the adverse effect.¹⁶ One commenter also submitted a study concluding that there was higher salmonella rates, for all salmonella serotypes, for hens confined in cages.¹⁷ Accordingly, consumers also benefit from the Rulemaking’s food safety implications.

¹³ Declaration Of Devrim Ikizler; Vanhonacker, F. and Verbeke, W. (2009) Buying higher welfare poultry products? Profiling Flemish consumers who do and do not. *Poultry Science*, 88(12): 2702-2711.

¹⁴ Declaration Of Devrim Ikizler, at ¶ 20.

¹⁵ Chang, J. B., Lusk, J. L., & Norwood, F. B. (2010). The price of happy hens: A hedonic analysis of retail egg prices. *Journal of Agricultural and Resource Economics*, 406-423.

¹⁶ Geng, A. L., Liu, H. G., Zhang, Y., Zhang, J., Wang, H. H., Chu, Q., & Yan, Z. X. (2020). Effects of indoor stocking density on performance, egg quality, and welfare status of a native chicken during 22 to 38 weeks. *Poultry Science*, 99(1),163-171.

¹⁷ European Food Safety Authority. 2007. Report of the Task Force on Zoonoses Data Collection on the Analysis of the baseline study on the prevalence of Salmonella in holdings of laying hen

Another significant benefit of the Rulemaking over the other probable alternative, which is a transition to cage-free production by May 1, 2023, mandated by ballot initiative, is a more stable egg supply. Egg producers, including Arizona egg producers, need time to convert their operations to cage-free. The Seidman Institute notes that other states implementing cage free mandates have allowed 3-5 years between the passage of the rules and the planned implementation dates.

There are significant supply concerns if Arizona transitions to cage-free before 2025. For example, local producer Hickman's Egg Ranch informs the Department that it cannot convert the remainder of its production facilities to cage-free housing by May 31, 2023, as required by the Initiative, and may have to euthanize a portion of its flock to avoid criminal penalties if the Initiative passes. Last year, Hickman's supplied a significant portion of Arizona's eggs to consumer, so a sudden and significant drop in its production could reduce Arizona's egg supply and increase the costs of eggs for Arizona consumers, at least for a time. Additionally, nine other states including California, Massachusetts, Utah, Colorado, Michigan, Nevada, Oregon, Rhode Island, and Washington, have passed legislation requiring that all eggs produced or sold in their states come from chickens raised using cage-free production methods in the next 1-5 years. Most of those states are net importers of eggs. Accordingly, if the Ballot initiative passes and Arizona is forced to go cage-free in 2023, it will be competing with these other states to obtain sufficient supply.

With these additional benefits, however, consumers will face increased costs, which the Department estimates will run between \$2.71 and \$5.42 per year. As noted above, the Rulemaking is anticipated to increase wholesale prices (in the long run) by \$.012 to \$.39 per dozen. Although the price difference between conventional and cage-free eggs is more pronounced, experts anticipate the cage-free prices will come down as supply increases and cage-free becomes the commodity egg.

flocks of *Gallus gallus*. The EFSA Journal 97. Available at <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2007.97r>. Last accessed February 14, 2022.

According to USDA WASDE data, the average yearly egg consumption for the years 2010-2021 is 270.675 eggs per year per person.¹⁸ If you assume that the increase in the wholesale price will be \$.0325 an egg, and that retailers will pass all of that cost on to the consumer, neither of which are likely in the long term, then the cost to the consumer would be \$8.79 per year (\$.0325 x 270.675 eggs). Considering that the average U.S. consumer spent \$7,316.00 on food per year in 2019-2020, even that increase is still barely more than an .1% increase in the costs of their overall food expenditures.

The only economic analysis the Department received or reviewed that was specific to Arizona, the Seidman Institute's report, determined that the Rulemaking would create a loss in consumer surplus¹⁹ of somewhere between \$4.81 to \$11.05 per Arizona household, per year.

Both of these findings are still in line with the Department's preliminary economic analysis. The Department concludes that the animal welfare, food safety, and food supply benefits outweigh the marginal cost increase to consumers.

9. Probable effects on state revenues:

Because eggs are food products, there is no sales tax on egg purchases. Thus, there is not likely to be any change in tax revenues. There may be a small increase in egg inspection fees paid to the Department. Outside of those changes, however, the Department anticipates there will be little impact on state revenues.

10. Less intrusive or less costly alternative methods considered:

The Department has considered the alternatives for transitioning to cage-free production and believes this is the least costly and intrusive method for doing so.

¹⁸ USDA World Agricultural Supply and Demand Estimates (WASDE) available at <<https://www.usda.gov/oce/commodity/wasde>>.

¹⁹ The Seidman institute describes "consumer surplus" as "the difference between the price that consumers pay for a good or service, and the price that they are implicitly willing to pay."

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6. Daily milk production,
 7. Water source,
 8. Waste water disposal system,
 9. Number of bulk storage tanks, and
 10. Certification that the dairy farm facilities comply with Grade A requirements.
- B.** An applicant for a dairy farm permit shall demonstrate compliance with the minimum standards set out in the PMO by a Department inspection.
- C.** A permittee shall maintain compliance with the minimum standards set out in the PMO and shall be subject to inspection by the Department in accordance with the PMO.
- D.** The Department may suspend a permit for a permittee's failure to comply with the minimum standards and may revoke a permit if the permittee fails to correct deficiencies within a reasonable time.
- E.** Dairy farm permits are not transferable.

Historical Note

New Section made by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2). Emergency expired; new Section made by exempt rulemaking at 21 A.A.R. 2407, effective September 22, 2015 (Supp. 15-3).

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**R3-2-901. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-701, 3-703 and 3-704, the following shall apply to this Article:

“Check” means an individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A “check” is considered to be lower in quality than a “dirty.”

“Dirty” means a shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

“Leaker” means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

“Lot” means any quantity of two or more eggs.

“Lot Consolidation” means the removal of damaged eggs from cartons labeled by a producer or producer dealer and replacement of the damaged eggs with eggs of the same grade, size, brand, expiration date and source.

“Pasteurized in-shell eggs” means eggs that have been pasteurized with the shell intact by any method approved by the Federal Food and Drug Administration or the Department.

“Repacking” means changing the identity of a lot of eggs by removing them from the original container labeled by a packer and placing them into another container not labeled by the packer at the point of origin with the same grade, size, lot number, source and/or brand.

“Spot-check” sample means any sample less than a representative sample described in the chart in R3-2-903(B).

“Ultimate consumer” means a person consuming eggs or egg products and a restaurant using eggs in the preparation of a meal.

“United Egg Producers Animal Husbandry Guidelines” means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition. This material is incorporated by reference, does not include any later amendments

or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007, or the United Egg Producers at 1720 Windward Concourse, Ste. 230, Alpharetta, GA 30005.

“United Egg Producers Certified” means a company that has achieved United Egg Producers Certified status pursuant to the requirements prescribed by the United Egg Producers Animal Husbandry Guidelines.

“United Egg Producers Certified logo” means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.

Historical Note

Former Rule 1; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-01 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-901 (Supp. 82-1). Section R3-6-101 renumbered to R3-2-901 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-902. Standards, Grades, and Weight Classes for Eggs; Pasteurized In-Shell Eggs

- A.** Standards for Eggs. All standards, grades, and weight classes of quality for chicken eggs in the shell shall meet the grades for eggs as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and the United States Department of Agriculture, Agricultural Marketing Service, Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Ave., S.W., Washington, DC 20250-0259, or online at www.ams.usda.gov/grades-standards/eggs. “AMS” means Agricultural Marketing Service, United States Department of Agriculture.
- B.** Standards for Pasteurized In-Shell Eggs. It is unlawful for a producer, producer dealer, dealer, or retailer to sell, offer for sale, or expose for sale pasteurized in-shell eggs that are packed for human consumption unless both of the following conditions are met:
1. Quality and weight classes:
 - a. The eggs used to produce pasteurized in-shell eggs shall meet Consumer Grades A or AA and Weight Classes for Eggs of subsection (A).
 - b. At destination:
 - i. Pasteurized in-shell eggs shall contain no more than 7 percent (9 percent for Jumbo size) Checks and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.
 - ii. In lots of two or more cases, no individual case may exceed 10 percent Checks.
 - c. Pasteurized in-shell eggs shall meet the weight classes as indicated in Table I. Weight Classes for Pasteurized In-Shell Eggs.
 2. Labeling requirements. Except as provided in subsection (B)(2)(j), it is unlawful for an egg producer, producer dealer, dealer or retailer to sell, offer for sale, or expose

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for sale pasteurized in-shell eggs that are packed for human consumption unless each container intended for sale to the ultimate consumer is labeled on one outside top, side, or end with all of the following:

- a. The consumer container is conspicuously labeled "KEEP REFRIGERATED" or with words of similar meaning as approved by the Department. Consumer container labeling that complies with the safe handling instructions required by Section 101.17 of Title 21 of the Code of Federal Regulations shall be deemed to comply with this subsection.
- b. The consumer container is conspicuously labeled "produced from" in conjunction with the appropriate consumer grade in letters no smaller than 1/2 size of the labeled consumer grade. The use of the consumer grade without the qualifier "produced from" is not permitted.
- c. The words "Best By", or "Use by" immediately followed by the month and day in bold type. Months shall be abbreviated Jan, Feb, Mar, Apr, May, Jun, Jul, Aug, Sep, Oct, Nov or Dec. The "Use by," or "Best before" date shall not exceed 75 days from the date on which the pasteurized in-shell eggs were pasteurized, excluding the date of pasteurization. Processors of in-shell eggs that subject the eggs to the pasteurization process shall establish a sell-by date by completion of an appropriate shelf stability study that includes public health and safety criteria. The processor shall retain the study on file at the processing plant and make it available to the Department upon request.

- d. If the pasteurized in-shell eggs are repacked, the original "Best By" or "Use by" date shall apply.
- e. A Julian pack date which is the consecutive day of the year on which the pasteurized in-shell eggs were pasteurized.
- f. The identification number of the plant of origin.
- g. A conspicuous identification of the eggs as "pasteurized."
- h. All state and federal labeling requirements.
- i. This Section does not apply to pasteurized in-shell eggs that are packaged for export.
- j. Subsection (B) does not apply to pasteurized in-shell eggs that are packaged for interstate commerce or pasteurized in-shell eggs that are packaged for military sales if exported to a state or federal agency that requires a different format for the sell-by or best-if-used-by date on pasteurized in-shell eggs, and the processor is utilizing that format.

Historical Note

Former Rule 2; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-02 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-902 (Supp. 82-1). Section R3-6-102 renumbered to R3-2-902 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 892, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

Table I. Weight Classes for Pasteurized In-Shell Eggs

Weight Classes for Pasteurized In-Shell Eggs			
Size or weight class	Minimum net weight per dozen (ounces)	Minimum net weight 30 per dozen (pounds)	Minimum net weight for individual eggs at rate per dozen (ounces)
Jumbo	30	56	29
Extra large	27	50 1/2	26
Large	24	45	23
Medium	21	39 1/2	20

*A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 percent.

Historical Note

Table I. Weight Classes for Pasteurized In-Shell Eggs made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-903. Sampling: Schedule and Methods for Evidence

- A. An inspector may conduct random spot-check sampling of a lot of eggs to determine whether the lot meets minimum quality and weight standards and is in compliance with R3-2-907(B).
- B. Representative egg sampling, under A.R.S. § 3-710(G), shall be based on Table II. A lot that does not meet minimum quality or weight standards or is not in compliance with R3-2-907(B) shall receive a warning notice hold tag.
 - 1. An inspector may draw additional samples to determine whether the lot meets the minimum requirements.
 - 2. When loose eggs are out of the case, the sample shall be based on a carton.
 - 3. Eggs shall be sampled on a 30-dozen-case basis. When eggs are packed in other lot quantities, an inspector shall

convert the quantity of eggs to the equivalent 30-dozen-case basis to establish the official sample size.

Historical Note

Former Rule 3; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-03 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-903 (Supp. 82-1). Section R3-6-103 renumbered to R3-2-903 (Supp. 91-4). Section repealed, new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

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Table II. Minimum Number of Cases and Cartons Comprising a Representative Sample

Lot size of cartons	Minimum eggs for inspection	Lot size of 30 doz. per case	Minimum cases for inspection ¹
1 - 4 cartons	All	1 case	1 case
5 - 30 cartons inclusive	50	2 - 10 cases inclusive	2 cases
31 - 120 cartons inclusive	100	11 - 25 cases inclusive	3 cases
120 - 210 cartons inclusive	200	26 - 50 cases inclusive	4 cases
211 - 315 cartons inclusive	300	51 - 100 cases inclusive	5 cases
		101 - 200 cases inclusive	8 cases
		201 - 300 cases inclusive	11 cases
		301 - 400 cases inclusive	13 cases
		401 - 500 cases inclusive	14 cases
		501 - 600 cases inclusive	16 cases
		For each additional 50 cases or fraction of a case in excess of 600 cases	1 case

¹An inspector shall take 100 eggs from each case for inspection.

Historical Note

Table II was made under new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3); it was last amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). The table and historical notes were moved out of R3-2-903 to maintain the numbering codification scheme of tables made at 26 A.A.R. 781 (Supp. 20-2).

R3-2-904. Quarterly Report Periods

Quarterly reports are due as prescribed in A.R.S. § 3-716(D). The quarterly report periods for inspection fees are:

1. July 1 to September 30,
2. October 1 to December 31,
3. January 1 to March 31, and
4. April 1 to June 30.

Historical Note

Former Rule 4; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-04 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-904 (Supp. 82-1). Section R3-6-104 renumbered to R3-2-904 (Supp. 91-4). Section repealed, new Section R3-2-904 renumbered from R3-2-907 and amended effective July 13, 1995 (Supp. 95-3).

R3-2-905. Inspection Fee Rate

- A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).
- B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).

Historical Note

Former Rule 5; Former Section R3-6-05 renumbered as Section R3-2-905 (Supp. 82-1). Section R3-6-105 renumbered to R3-2-905 (Supp. 91-4). Section repealed, new Section R3-2-905 renumbered from R3-2-908 and amended effective July 13, 1995 (Supp. 95-3). Amended by emergency rulemaking at 12 A.A.R. 4063, effective October 1, 2006 for 180 days (Supp. 06-4). Emergency renewed at 13 A.A.R. 1509, effective April 9, 2007 for 180 days (Supp. 07-2). Amended by final rulemaking at

13 A.A.R. 1639, effective June 30, 2007 (Supp. 07-2).

R3-2-906. Violations and Penalties

A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:

1. Category A:
 - a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
 - b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
 - c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
 - d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container. Selling pasteurized in-shell eggs without or past the “Best By” or “Use by” date;
 - e. Failing to maintain records and reports required by this Article;
 - f. Failing to label a carton, case, or container with one size, one grade, one brand name, or, if applicable under R3-2-907(B), the United Egg Producer Certified logo;
 - g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
 - h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
 - i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products;
 - j. Selling eggs that have not been produced in accordance with the standards prescribed under R3-2-907(B);
 - k. Failing to raise egg-laying hens in this state in accordance with the standards prescribed under R3-2-907(A).
2. Category B:
 - a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(13); or

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- b. Advertising, representing, or selling out-of-state eggs as local eggs.
- 3. Category C:
 - a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
 - b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower;
 - c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F; or
 - d. Failing to meet the sanitary standards egg processing of R3-2-908.
- B. Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.
- C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is in Table III.

Historical Note

Former Rule 6; Amended effective February 19, 1982. Former Section R3-6-06 renumbered as Section R3-2-906 (Supp. 82-1). Section R3-6-106 renumbered to R3-2-906 (Supp. 91-4). Former Section R3-2-906 renumbered to R3-2-903, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4058, effective October 7, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

Table III. Violations and Penalties

Number of Violations	Category A	Category B	Category C
1	Warning	Warning	Warning
2	\$50	\$50	\$100
3	\$100	\$100	\$200
4		\$150	\$400
5		\$200	\$500
6		\$250	
7		\$300	

Historical Note

Table III made by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Heading added for clarity (Supp. 21-3).

R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

- A. All egg-laying hens in this state shall be raised according to United Egg Producers Animal Husbandry Guidelines.
- B. All eggs sold in this state produced by hens shall be from hens raised according to the United Egg Producers Animal Husbandry Guidelines. All eggs shall display the United Egg Producers Certified logo on their cases, cartons, and containers, or the egg dealer shall annually provide the Department with a copy of a current independent third-party audit that demonstrates that the eggs were produced by hens raised according to UEP Animal Husbandry Guidelines.
- C. Subsections (A) and (B) do not apply to egg producers operating or controlling the operation of one or more egg ranches

- each having fewer than 20,000 egg-laying hens producing eggs. Subsections (A) and (B) also do not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.
- D. All producers and producer dealers with operations within the state shall have a written biosecurity plan in place. At a minimum each producer and producer dealer shall:
 - 1. Restrict access to all areas where poultry are housed or kept.
 - 2. Take steps to ensure that contaminated material is not transported into any poultry barns.
 - 3. Cover and secure feed in a manner that prevents wild bird, rodents or other animals from accessing the feed.
 - 4. Cover and properly contain poultry carcasses, used litter, or other disease-containing organic materials that prevents wild birds, rodents or other animals from accessing the material and movement of the materials by the wind.
 - 5. Keep houses in good repair and all areas to which the birds have access should be kept free of materials hazardous to the birds.
- E. The biosecurity plan shall contain the following:
 - 1. Methods for the disposal and handling of poultry manure.
 - 2. Procedures for prevention, control and eradication of vectors for poultry diseases.
 - 3. Procedures for the detection, control and treatment of poultry diseases.
 - 4. Methods for the disposal and handling of culled birds and entire flocks under normal cyclic operations and following emergency depletion as a result of disease.
 - 5. A facility poultry disease control and prevention plan which includes standard operating procedures with respect to specific measures to control and prevent disease including but not limited to structural and operational disease control and prevention provisions.
 - 6. Procedures to prevent cross contamination between nest run and in line eggs.
 - 7. Procedures to prevent the introduction and transmittal of diseases by vehicles and any other forms of transportation.
 - 8. Signed agreements with all employees containing biosecurity procedures regarding contact with outside poultry and wild birds.
- F. A producer and producer dealer shall allow the Department to enter the premises during normal working hours to inspect the biosecurity plan documents and the biosecurity that is implemented.

Historical Note

Former Rule 7; Former Section R3-6-07 renumbered as Section R3-2-907 (Supp. 82-1). Section R3-6-107 renumbered to R3-2-907 (Supp. 91-4). Section R3-2-907 renumbered to R3-2-904 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-908. Sanitary Standards; Egg Processing

- A. All egg producers and retail locations where lot consolidation is conducted in this state shall meet the facility and sanitary operation requirements prescribed by the Regulations Governing the Voluntary Grading of Shell Eggs, 7 CFR 56, effective March 30, 2008. This material is incorporated by reference, does not include any later editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007.

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- B. No person other than a producer or producer dealer shall repack eggs. All eggs sold to the ultimate consumer must be pre-packaged with all required labeling requirements of this Article and A.R.S. Title 3 Chapter 5. A producer, producer dealer shall not pack or repack eggs that have been in retail distribution channels.
- C. A retailer may lot consolidate eggs labeled for the ultimate consumer by a packer. A daily log with lot information is required and shall include volume consolidated, grade, size, brand, lot and source.

Historical Note

Former Rule 8; Amended effective October 1, 1979 (Supp. 79-5). Former Section R3-6-08 renumbered as Section R3-2-908 (Supp. 82-1). Amended effective January 1, 1985 (Supp. 84-6). Amended effective December 30, 1987 (Supp. 87-4). Amended effective March 23, 1990 (Supp. 90-1). Section R3-6-108 renumbered to R3-2-908 (Supp. 91-4). Section R3-2-908 renumbered to R3-2-905 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-909. Repealed**Historical Note**

Former Rule 9; Former Section R3-6-09 renumbered as Section R3-2-909 (Supp. 82-1). Section R3-6-109 renumbered to R3-2-909 (Supp. 91-4). Section repealed effective July 13, 1995 (Supp. 95-3).

ARTICLE 10. AQUACULTURE**R3-2-1001. Definitions**

In addition to the definitions provided in A.R.S. § 3-2901, the following shall apply unless the context otherwise requires:

1. "Certificate of Aquatic Health" is an official document from an issuing state or an equivalent form published by the United States Fish and Wildlife Service or the United States Department of Agriculture attesting that the live aquatic animals described thereon have been inspected and are free of the diseases and causative agents set forth in R3-2-1009.
2. "Department" means the Arizona Department of Agriculture.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2).

R3-2-1002. Fees for Licenses; Inspection Authorization and Fees

- A. License fees are established as follows:
1. Aquaculture facility: \$100 annually.
 2. Fee fishing facility: \$100 annually.
 3. Aquaculture processor: \$100 annually.
 4. Aquaculture transporter: \$100 annually.
 5. Special licenses: \$10 annually.
- B. An expired license may be renewed within 90 days after expiration by payment of a \$50 late fee.
- C. Upon request of the licensee, the Department shall assess the licensed facility and, if applicable, certify the facility is free from infectious diseases and causative agents listed in R3-2-1009 before issuing a Certificate of Aquatic Health. All expenses properly incurred in the certification procedure of the inspection, including time, travel, and laboratory expenses, shall be paid to the Department by the licensee requesting certification.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

R3-2-1003. General Licensing Provisions

- A. An applicant for a license to operate an aquaculture facility or a fee fishing facility, or to operate as an aquaculture processor or aquaculture transporter shall provide the following information on a form furnished by the Department:
1. Whether the applicant is an individual, corporation, partnership, cooperative, association, or other type of organization;
 2. The name and address of the applicant;
 3. A corporation shall specify the date and state of incorporation;
 4. The principal name of the business, and all other business names that may be used;
 5. The name, mailing address, and telephone number of the applicant's authorized agent;
 6. The street address or legal description of the location of the facility to be licensed; and
 7. The signature of the person designated in subsection (A)(5), and the date the application is completed for submission to the Department.
- B. The Department shall grant a license when all conditions are met and assign a Department establishment number to each facility.
- C. All licenses expire on December 31 for the year issued.
- D. A licensee shall advise the Department in writing of any change in the information provided on the application during the license year. This information shall be provided within 30 calendar days of the change.
- E. To prevent the spread of diseases and causative agents listed in R3-2-1009, the Department may inspect and take samples from any facility or shipment being transported. A licensee shall notify the Department within 72 hours of becoming aware of the presence of any disease or causative agent listed in R3-2-1009. Aquatic animals found to be infected with a disease or causative agent listed in R3-2-1009 are prohibited from interstate or intrastate movement without prior written Department approval.
- F. The Department shall quarantine or seize aquatic animals, alive or dead, plants, or products for examination or diagnostic study when there is a potential for spread of a disease or causative agent listed in R3-2-1009, or any other disease or causative agent that could constitute a threat to aquatic animals or plants of the state. The Department shall issue a written notice to the licensee specifying:
1. The reason for the Department's action; and
 2. The licensee's right to request a hearing as prescribed in A.R.S. § 3-2906.
- G. A licensee shall conspicuously mark all quarantined aquatic products and quarantined areas in a manner specified by the Department.
- H. A licensee shall pay all diagnostic, quarantine, and destruction costs.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

R3-2-1004. Specific Licensing Provisions; Aquaculture Facility; Fee Fishing Facility; Special License Facility

- A. In addition to the application requirements in R3-2-1003, an applicant for a license to operate an aquaculture facility, a fee fishing facility, or a special license facility under A.R.S. § 3-

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.
11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.
12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.
3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.
4. Cooperate with the office of tourism in distributing Arizona tourist information.
5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.
6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.
7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.
8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-710. Powers and duties; state preemption; egg promotion program

- A. The department may acquire and distribute to interested persons useful information relative to preparing for market, handling, purchasing, transporting, storing and marketing eggs and egg products, including demonstrating how to classify eggs and egg products in accordance with the uniform standards and grades prescribed pursuant to this chapter.
- B. The department may issue in booklet form copies of this article containing complete descriptive terms as to shell, aircell, white, yolk and germ, and may change definitions of terms and grades as they are made and promulgated by the United States department of agriculture.
- C. On request of the United States government, and others, the director may negotiate and sign cooperative agreements to provide inspection and grading services and charge and receive payment for the reasonable cost of such services. The monies received for such services shall be deposited in the state egg inspection trust fund established by section 3-717.
- D. When the production of papers, books and records relating to any matter under investigation is deemed advisable, the director may apply to the superior court in any county for an order requiring the production of the papers, books and records. If the court is satisfied that the papers, books and records are pertinent to the matter under investigation, their production shall be ordered.
- E. A complaint filed with the department charging a noncompliance with or violation of any provision of this article shall be in writing and signed by the complainant.
- F. The supervisor and inspectors shall enforce this article in conformity with rules adopted by the director. The refusal of an officer authorized under this article to carry out the orders and directions of the director in the enforcement of this article or prosecutions under this article is neglect of duty. The director shall make and enforce such rules as the director deems necessary to carry out this article.
- G. An inspector may enter and inspect any place or conveyance within this state over which the inspector has supervision where eggs are produced, candled, incubated, stored, packed, delivered for shipment, loaded, shipped, transported or sold, and may inspect all invoices and eggs and the cases and containers of the eggs and equipment found in the places or conveyances, and may take for inspection representative samples of the invoices, eggs and cases or containers for the purpose of determining whether or not any provision of this article has been violated.
- H. An inspector, while enforcing this article, may seize and hold as evidence an advertisement, sign, placard, invoice, case or container of eggs or egg products or all or any part of any pack, load, lot consignment or shipment of eggs or egg products packed, stored, delivered for shipment, loaded, shipped, transported or sold in violation of any provisions of this article.
- I. The department may prescribe minimum standards for egg processing plants and sanitary standards for processing shell eggs. The department shall establish these standards by rule. Chemicals used in egg processing plants, sanitizers used in egg processing, egg soaps, egg oil and other substances used in processing shell eggs are subject to the approval of the director.
- J. The director shall adopt rules for poultry husbandry and the production of eggs sold in this state. This subsection does not apply to egg producers operating or controlling the operation of an egg ranch that has fewer than twenty thousand egg-laying hens producing eggs.
- K. Consistency of poultry husbandry practices for the production of eggs is a statewide matter. The regulation of poultry husbandry practices related to the production of eggs is not subject to further regulation by a county, city, town or other political subdivision of this state.
- L. The director may:

1. Establish an egg promotion program to provide certification, inspection and grading services and may prescribe, by rule, fees for those services. Except as provided in paragraph 3 of this subsection, monies collected from the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the state egg inspection trust fund established by section 3-717.
2. Adopt rules to administer the egg promotion program, including participation guidelines, use requirements for department trademarks and certification marks and other rules the director deems necessary.
3. Conduct inspections to ensure compliance with the trademark and certification mark rules adopted pursuant to this subsection. The monies collected from fees for an inspection conducted pursuant to this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in the state egg inspection trust fund established by section 3-717.

3-716. Inspection fees; report and payment by dealers; exception; penalty; collection

- A. An inspection fee of not more than three mills per dozen on shell eggs and three mills per pound on egg products shall be paid by a dealer, producer-dealer, manufacturer or producer on all eggs and egg products regardless of origin, sold to a retailer, hotel, hospital, bakery, restaurant, other eating place or consumer for human consumption within this state. Inspection fees on eggs used for the purpose of breaking, freezing or drying shall be paid by the manufacturer, dealer or distributor if sold or offered for sale to retailers or consumers for human consumption within this state.
- B. If it appears that the revenue derived from inspection fees is more than is required for the administration of this article, the director may decrease the inspection fee and at any time thereafter may increase or decrease the inspection fee, but at no time shall it exceed an amount of three mills per dozen on shell eggs or three mills per pound on egg products.
- C. All manufacturers, dealers, producer-dealers and producers shall file:
1. A quarterly report with the department showing the name and address of the manufacturer, dealer, producer-dealer or producer.
 2. The number of dozen of eggs or pounds of egg products sold or delivered for the period to retail stores, hotels, hospitals, bakeries, restaurants, other eating places or consumers for human consumption within this state.
- D. The report shall be accompanied by check or money order covering the inspection fee total of a value equal to the inspection fee in force at that time on all eggs or egg products shown on such report within thirty days following the close of quarterly report periods.
- E. The records shall be retained for a period of one year and shall be open at all times to the inspection of the department.
- F. Notwithstanding the requirements of this section, twenty-five cases per year of nest run eggs as provided in section 3-715 may be sold by any person to retailers or consumers without being subject to the report and inspection fee as provided by this section.
- G. In addition to the inspection fees prescribed by this section, a penalty of ten per cent shall be added for the delinquent filing of any report or the delinquent payment of any inspection fee, and if the report and payment are not made within ten days after notification of delinquency, the penalty shall be twenty-five per cent of the inspection fee. Persons filing a false report shall be penalized fifty per cent of the amount due for inspection fees. The penalties prescribed by this section shall be deposited in the state egg inspection trust fund.
- H. Such inspection fees and penalties shall be collected by civil action filed by the county attorney.

BOARD OF EQUALIZATION

Title 16, Chapter 4, Article 1

New Article: Article 1

New Section: R16-4-101, R16-4-102, R16-4-103, R16-4-104, R16-4-105, R16-4-106, R16-4-107, R16-4-108, R16-4-109, R16-4-110, R16-4-111, R16-4-112, R16-4-113, R16-4-114, R16-4-115, R16-4-116, R16-4-117



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 1, 2022; April 5, 2022

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

FROM: Council Staff

DATE: March 11, 2022

SUBJECT: BOARD OF EQUALIZATION

Title 16, Chapter 4, Article 1

New Article: Article 1

New Section: R16-4-101, R16-4-102, R16-4-103, R16-4-104, R16-4-105,
R16-4-106, R16-4-107, R16-4-108, R16-4-109, R16-4-110,
R16-4-111, R16-4-112, R16-4-113, R16-4-114, R16-4-115,
R16-4-116, R16-4-117

Staff Update:

As a reminder, this regular rulemaking from the State Board of Equalization (Board) seeks to add a new article containing seventeen (17) rules to Title 16, Chapter 4, relating to the procedures for hearings before the Board, as required pursuant to A.R.S. § 42-16154(C).

Specifically, in 1996, the Board implemented the required rules through an emergency rulemaking pursuant to A.R.S. § 41-1026. Emergency rules implemented through A.R.S. § 41-1026 are only valid for 180 days, unless an extension is granted or they are replaced with rules promulgated through regular rulemaking. The Board indicates the emergency rules related to procedures for hearings expired on July 30, 1996. This rulemaking is intended to re-codify procedures for hearings before the Board.

This rulemaking was previously considered at the June 29, 2021 Study Session and July 7, 2021 Council Meeting. At the July 7, 2021 Council Meeting, the Council voted to table consideration of this rulemaking to the July 27, 2021 Study Session and August 8, 2021 Council Meeting for the Board to address several Council concerns with the proposed rule amendments, specifically, rules R16-4-104(D) related to confidentiality and R16-4-110 related to the burdens of proof.

Prior to the July 27, 2022 Study Session, the Board submitted an annotated Notice of Final Rulemaking to reflect additional proposed amendments to the rules, some in response to the Council's concerns. At the August 8, 2021 Council Meeting it was determined that the additional proposed amendments to the rules in the annotated Notice of Final Rulemaking would cause the rules to be "substantially different" from those contained in the original Notice of Proposed Rulemaking filed with the Secretary of State. *See* A.R.S. § 41-1025(A). As a result, the Board withdrew the rulemaking from consideration with the intention of filing a Notice of Supplemental Proposed Rulemaking with the Secretary of State pursuant to A.R.S. § 41-1022(E), incorporating all the additional proposed amendments. The Board's Notice of Supplemental Proposed Rulemaking was published in the Administrative Register on September 17, 2021 and incorporated the following changes:

- **R16-4-101**: Added definitions for Chairman and SBOE Chairman.
- **R16-4-104(A)(4)(b)**: Filing a petition by electronic means is explained in detail.
- **R16-4-104(A)(4)(c)**: Added for compliance.
- **R16-4-104(A)(5)**: The reference was changed to affect either party to the hearing and the word "shall" was changed to "must" for submission in-person or by US Postal Service. Filing deadlines to the SBOE is clarified as "business" days.
- **R16-4-104(A)(6)**: The wording was changed to reflect clarity regarding the and the word "shall" has been changed to "may" for compliance. The number of copies of evidence was changed and the days for filing to the SBOE is clarified as "business" days.
- **R16-4-104(A)(7)**: The word "shall" has been changed to "may" to reflect the discretion of the SBOE.
- **R16-4-104(A)(9)**: Was eliminated as being superfluous.
- **R16-4-104(D)**: This rule is changed for clarity to inform the taxpayer SBOE hearings are open to the public and that evidence submitted during the hearing becomes public information unless otherwise restricted by law.
- **R16-4-110**: Redefines the standard of proof and is annotated by the citing applicable statutes.
- **R16-4-111**: A rewrite of this rule was necessitated upon review of A.R.S. § 16161(D), which limits the SBOE subpoena power. This rule is a material change to the proposed rules.
- **R16-4-116**: A rewrite of this rule was necessitated by public comments requesting a clarification of a process for a review of a rendered decision within the jurisdiction of the SBOE. This rule is a material change to the proposed rules.

A subsequent Notice of Final Rulemaking was submitted to the Council for consideration at the February 22, 2022 Study Session. At the Study Session, additional concerns were raised

regarding R16-4-116 related to requests for rehearing or review of SBOE decisions and their timing and the proposed rule's consistency with A.R.S. § 41-1062(B) and Arizona Rule of Civil Procedure 59. In response to these concerns, the Board submitted suggested revisions to R16-4-116 to bring the rule in line with A.R.S. § 41-1062(B) and Arizona Rule of Civil Procedure 59 and requested the Council approve the rulemaking with those changes pursuant to Council rule R1-6-204.

At the March 1, 2022 Council Meeting, the Council also requested that the Board provide a list of the statutes each proposed rule was derived from and a comparison of the statutory and rule language to assess whether the rule language could be made more clear than corresponding statutory language. The Council voted to table consideration of this rulemaking to the current meeting cycle and the Board agreed to submit the language comparison supplemental information prior to the March 29, 2022 Study Session.



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 1, 2022

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

FROM: Council Staff

DATE: February 10, 2022

SUBJECT: BOARD OF EQUALIZATION
Title 16, Chapter 4, Article 1

New Article: Article 1

New Section: R16-4-101, R16-4-102, R16-4-103, R16-4-104, R16-4-105,
R16-4-106, R16-4-107, R16-4-108, R16-4-109, R16-4-110,
R16-4-111, R16-4-112, R16-4-113, R16-4-114, R16-4-115,
R16-4-116, R16-4-117

Summary:

This regular rulemaking from the State Board of Equalization (Board) seeks to add a new article containing seventeen (17) rules to Title 16, Chapter 4, relating to the procedures for hearings before the Board, as required pursuant to A.R.S. § 42-16154(C).

Specifically, in 1996, the Board implemented the required rules through an emergency rulemaking pursuant to A.R.S. § 41-1026. Emergency rules implemented through A.R.S. § 41-1026 are only valid for 180 days, unless an extension is granted or they are replaced with rules promulgated through regular rulemaking. The Board indicates the emergency rules related to procedures for hearings expired on July 30, 1996. This rulemaking is intended to re-codify procedures for hearings before the Board.

This rulemaking was previously considered at the June 29, 2021 Study Session and July 7, 2021 Council Meeting. At the July 7, 2021 Council Meeting, the Council voted to table consideration of this rulemaking to the July 27, 2021 Study Session and August 8, 2021 Council Meeting for the Board to address several Council concerns with the proposed rule amendments, specifically, rules R16-4-104(D) related to confidentiality and R16-4-110 related to the burdens of proof.

Prior to the July 27, 2022 Study Session, the Board submitted an annotated Notice of Final Rulemaking to reflect additional proposed amendments to the rules, some in response to the Council's concerns. At the August 8, 2021 Council Meeting it was determined that the additional proposed amendments to the rules in the annotated Notice of Final Rulemaking would cause the rules to be "substantially different" from those contained in the original Notice of Proposed Rulemaking filed with the Secretary of State. *See* A.R.S. § 41-1025(A). As a result, the Board withdrew the rulemaking from consideration with the intention of filing a Notice of Supplemental Proposed Rulemaking with the Secretary of State pursuant to A.R.S. § 41-1022(E), incorporating all the additional proposed amendments. The Board's Notice of Supplemental Proposed Rulemaking was published in the Administrative Register on September 17, 2021 and incorporated the following changes:

- **R16-4-101**: Added definitions for Chairman and SBOE Chairman.
- **R16-4-104(A)(4)(b)**: Filing a petition by electronic means is explained in detail.
- **R16-4-104(A)(4)(c)**: Added for compliance.
- **R16-4-104(A)(5)**: The reference was changed to affect either party to the hearing and the word "shall" was changed to "must" for submission in-person or by US Postal Service. Filing deadlines to the SBOE is clarified as "business" days.
- **R16-4-104(A)(6)**: The wording was changed to reflect clarity regarding the and the word "shall" has been changed to "may" for compliance. The number of copies of evidence was changed and the days for filing to the SBOE is clarified as "business" days.
- **R16-4-104(A)(7)**: The word "shall" has been changed to "may" to reflect the discretion of the SBOE.
- **R16-4-104(A)(9)**: Was eliminated as being superfluous.
- **R16-4-104(D)**: This rule is changed for clarity to inform the taxpayer SBOE hearings are open to the public and that evidence submitted during the hearing becomes public information unless otherwise restricted by law.
- **R16-4-110**: Redefines the standard of proof and is annotated by the citing applicable statutes.
- **R16-4-111**: A rewrite of this rule was necessitated upon review of A.R.S. § 16161(D), which limits the SBOE subpoena power. This rule is a material change to the proposed rules.
- **R16-4-116**: A rewrite of this rule was necessitated by public comments requesting a clarification of a process for a review of a rendered decision within the jurisdiction of the SBOE. This rule is a material change to the proposed rules.

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

The Board cites both general and specific statutory authority for these rules.

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

This rulemaking does not establish a new fee or contain a fee increase.

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

The Board did not review or rely on any study in conducting this rulemaking.

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

The Board expects the rulemaking to have minimal economic impact. The Board is simply making the rules required by statute. A taxpayer that wishes to appeal to the Board will incur the cost of complying with these rules when making the appeal. The rules are designed to ensure due process for all petitioners. A taxpayer that appeals to the Board does so because the taxpayer has determined the potential benefits of appealing outweigh the costs of complying with the rules.

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

The Board believes the methods specified in the rulemaking are the least intrusive and least costly possible. The Board sought alternative methods for providing these services and found none.

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

Property owners and taxpayers may appeal the valuation or classification placed on their property by the County Assessors of Arizona or the Arizona Department of Revenue (Department). Taxpayers who appeal to the Board a valuation or classification of real or personal property are directly affected by, bear the costs of, and directly benefit from the rulemaking. In limited instances, a county assessor or the Department may appeal to the Board in the same manner as a taxpayer. The taxpayer incurs the cost of complying with the requirements in statute and rule and receives the benefit of fair hearing regarding, and due process, regarding the valuation or classification at issue.

The Board incurred the expense of completing the rulemaking and will incur the expense of implementing the rules. The Board will have the benefit of complying with the statutory requirement that it make rules and will have rules that help ensure the fair and equitable treatment of all petitioners.

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

The final rules are not a substantial change from the Notice of Supplemental Proposed Rulemaking published on September 17, 2021.

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

A summary of the comments received related to this rulemaking and the Board's responses are outlined in Section 11 of the Preamble of the Board's Notice of Final Rulemaking. Additionally, copies of public comments received by the Board are included with the final materials for the Council's reference.

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

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

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

Not applicable. The Board indicates that no federal law is applicable to the subject of any rule in this rulemaking.

11. **Conclusion**

This regular rulemaking from the Board seeks to add a new article to Title 16, Chapter 4 codifying the procedures for hearings before the Board, as required pursuant to A.R.S. § 42-16154(C).

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

DOUGLAS A. DUCEY
Governor



GEORGE R. SHOOK
Acting Chairman

ARIZONA STATE BOARD OF EQUALIZATION

100 North Fifteenth Avenue, Suite 130
Phoenix, Arizona 85007
(602) 364-1600
<http://www.sboe.state.az.us>

December 21, 2021

Krishna Jhaveri
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste 305
Phoenix, Arizona 85007

**Re: A.A.C. Title 16. Tax Appeals
Chapter 4. State Board of Equalization**

Dear Mr. Jhaveri

The Arizona State Board of Equalization submits the attached final rule package to the Council for review and approval. The following information is provided for the Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed October 22, 2021, following a period for public comment and oral proceeding. The 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 of 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. A notification was not provided to the 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;
4. Public comments.

Sincerely,



George R. Shook
Acting Chairman

NOTICE OF FINAL RULEMAKING
TITLE 16. TAX APPEALS
CHAPTER 4. STATE BOARD OF EQUALIZATION

PREAMBLE

<u>1. Articles, Parts, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 1	New Article
R16-4-101	New Section
R16-4-102	New Section
R16-4-103	New Section
R16-4-104	New Section
R16-4-105	New Section
R16-4-106	New Section
R16-4-107	New Section
R16-4-108	New Section
R16-4-109	New Section
R16-4-110	New Section
R16-4-111	New Section
R16-4-112	New Section
R16-4-113	New Section
R16-4-114	New Section
R16-4-115	New Section
R16-4-116	New Section
R16-4-117	New Section

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

Authorizing statute: A.R.S. § 42-16154(C)

Implementing statute: A.R.S. §§ 42-16157, 42-16158, and 42-16159

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

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

Not applicable

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

Not applicable

4. **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 26 A.A.R. 1708

Notice of Proposed Rulemaking: 26 A.A.R. 1679

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

Name: George Shook

Address: 100 N 15th Ave, Suite 130, Phoenix, AZ 85007

Telephone: (602) 364-1600

Fax: (602) 364-1616

E-mail: gshook@sboe.az.gov

Website: <https://sboe.az.gov>

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

The State Board of Equalization (SBOE) is required under A.R.S. § 42-16154(C) to make rules of procedure for hearings before the SBOE. In 1996, the SBOE made the required rules using the emergency rulemaking procedure. Under the provisions of A.R.S. § 41-1026, the rules expired on July 30, 1996. The SBOE has functioned with procedures that

have not been formally promulgated as rules since 1996. In this rulemaking, the SBOE makes the required rules.

Mara Mellstrom, Policy Advisor to the Governor, provided an exemption from Executive Order EO2016-03 by e-mail dated February 8, 2017 and Trista Guzman Glover provided an exemption from Executive Order EO2020-02 by e-mail dated on May 5, 2020. The SBOE obtained approval from the Office of the Governor for the Final Rulemaking on December 22, 2021

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 SBOE does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The economic impact of the rulemaking will be positive for the SBOE, petitioners, and respondents. The SBOE will become compliant with Arizona Revised Statute § 42-16154 requiring the SBOE to establish these rules. This will create efficiencies in functioning for the SBOE and eliminate uncertainty caused by failure to have the required procedural rules.

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

Under R16-4-101 added definitions for Chairman and SBOE Chairman.

Under R16-4-104(A)(4)(b) explains the filing of a petition by electronic means in detail. Under R16-4-104(A)(4)(c) was added for compliance (see ARS 42-16051; 41-16052; 42-16053).

Under R16-4-104(A)(5) the reference was changed to affect either party to the hearing and the word “shall” was changed to “must” for submission by US Postal Service or in-person. The term “business days” added to clarify the deadline to file appeals to the SBOE.

Under R16-4-104(A)(5)(c)(i) a typographical error was corrected to require five copies of petitioner evidence to be submitted to the SBOE.

Under R16-4-104(A)(6) changed the wording to more closely follow statute. The word “shall” has been changed to “may” to accommodate issues raised by the assessor, or the Department, and the petitioner’s rebuttal of those issues. The SBOE changed the number of copies of evidence to reflect current practices. The term “business days” clarifies the correct number of days.

Under R16-4-104(A)(7) the word “shall” has been changed to “may” to reflect the discretion of the SBOE.

Rule R16-4-104(A)(9), the SBOE removed this rule as originally written, as it was determined to be superfluous.

Under R16-4-104(D), as changed, this rule informs the taxpayer the SBOE hearings are open to the public and that evidence submitted during the hearing becomes public information unless otherwise restricted by law.

Under R16-4-110, as changed, this rule redefines standard of proof and annotates the citing of applicable statutes.

Under R16-4-110 is not a material change to the proposed rules. The new verbiage immolates the subpoena criteria used by most Arizona non-judicial agencies.

Under R16-4-116, as changed, this rule responds to public comments requesting a clarification of a process for a review of a rendered decision within the jurisdiction of the SBOE. This rule is a material change to the proposed rules.

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

The SBOE submitted the Notice of Public Rulemaking to the Arizona Secretary of State. The date of publishing in the Arizona Administrative Register on July 31, 2020. The official public comment period began on September 29, 2020 and ended on October 30, 2020. The SBOE submitted a Notice of Supplemental Proposed Rulemaking to the SOS. The date of publishing in the Arizona Administrative Register is September 17, 2021. The official public comment period began on September 17, 2021 and ended on October 18, 2021.

The SBOE received comments from stakeholders and SBOE members. Included in the comments were several observations regarding the proposed rulemaking. Not all comments referenced the proposed rules. The SBOE received comments from SBOE Board members Mary Chandler, Susan Fair and Daniel Swango, and Department of Revenue employee Jolene Christopherson. Other comments came from Paul Euler, Jodi Bain, Thomas Naifeh, Kathryn Wiseman, Gail Sharp, and Jeff Nolan, property tax agents and/or their staff. The response to the comments and observations resulted in the clarification of the proposed rules. Nothing in the Notice of Final Rulemaking is a significant change to the Supplemental Proposed Rules.

As permitted under A.R.S. § 42-16161(A), the SBOE has chosen to offer electronic filing as a convenience to taxpayers. Several comments claimed that the electronic filing procedures were burdensome to the taxpayer. The SBOE mitigated any additional burdens caused by electronic filing procedures. The petitioner may elect to file paper documents instead. The SBOE has installed advanced technology and enhance procedures during and after the comment period that have overcome some of the contentions regarding electronic filing. This is a work in progress.

Several comments concern the SBOE's inability to keep documents confidential in defiance of Arizona Open Meeting and Public Record laws. These comments addressed the requirement for county assessors to hold income information for statutory shopping-

center valuation in confidence under A.R.S. § 42-13202(B). Statutes also set the requirements for the disclosure of confidential material. Disclosure is permitted for some court and administrative proceedings under A.R.S. § 42-2003(C). This applies to SBOE hearings because the taxpayer is a party to these cases.

The SBOE has experienced submissions of incomplete petitions. The Department created forms and instructions for submitting petitions. Along with the petition form, the Department requires a copy of the assessor's decision. In the past, some petitions have included only an excerpt of the assessor's decision and not the complete decision. R16-4-104(A)(4)(a)(ii) makes clear that all pages of the assessor's decision are required.

Public comments were made regarding SBOE subpoenas rule and the review of an SBOE Decision. In R16-4-111 and R16-4-116, respectively, A.R.S. § 41-1062 and A.R.S. § 42-16161(D) provide the SBOE with the discretion to issue subpoenas to compel testimony from witnesses. R16-4-111 conforms as closely as possible to Rule 45 of the Arizona Rules of Civil Procedure. A.R.S. § 41-1062 requires that rules for review of decisions conform as closely as is practicable to Rule 59 of the Arizona Rules of Civil Procedure. Both R16-4-111 and R16-4-116 were modeled after similar rules used by other agencies that conduct quasi-judicial hearings.

The SBOE follows the dictates of Arizona laws and complies with the Open Meeting and Public Records laws § 38-431 et seq, § 39-121, and §41-151. A.R.S. § 42-16161 allows the SBOE to accept petitions and evidence by electronic means. A.R.S. § 42-16161 provides that parties shall present evidence in person and that the SBOE decision will be based on evidence by the parties attending the hearings. Hearing officers make individual decisions at the conclusion of each hearing and hard copy mailed to the parties. The SBOE will consider all evidence available or presented at the hearing regardless if a party fails to attend a hearing. Evidence submitted to the SBOE becomes public information unless redacted by law.

Arizona Revised Statutes require the SBOE to mail written decisions to all parties and to the Department. A.R.S. § 42-16165 sets statutory deadlines for issuing decisions. The SBOE issues decisions during the hearing and within the statutory deadlines. Following a hearing, the SBOE will mail written decisions within a reasonable time as circumstances dictate. Such circumstances may include staff workloads, reviews by the Chairman and communication with parties and board members to ensure a correct description of the decision.

On-the-Record hearings are the result of coordination with all parties prior to being scheduled. The SBOE changed the wording of the proposed Rule R16-4-107 to indicate all parties must agree to the On-the-Record hearing. The SBOE complies with the American Disabilities Act and attempts to accommodate individual circumstances and may allow the use of testimony by telephone.

Arizona Revised Statute § 42-16162 directs the SBOE to render a decision that is just and proper. The SBOE may reject jurisdiction for an appeal because the appeal filing does not comply with Arizona Revised Statutes. The SBOE does not have the authority to determine if a property should be exempt from taxation. The SBOE cannot create exemptions. The SBOE does not have jurisdiction/authority to determine tax rates.

Copies of comments made by the public and interested parties are included in this package.

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:

None of the rules in the rulemaking requires a permit.

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

No federal law is applicable to the subject on any rule in this rulemaking.

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

The SBOE did not rely on nor submit an analysis regarding competitiveness of business.

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. The full text of the rules follows:

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

Section

- R16-4-101. Definitions
- R16-4-102. Jurisdiction of the SBOE
- R16-4-103. Representation before the SBOE
- R16-4-104. Filing a Petition; Filing Deadlines
- R16-4-105. Motions
- R16-4-106. Hearing
- R16-4-107. On-the-Record Hearing; Failure to Appear
- R16-4-108. Hearing Procedure
- R16-4-109. Rules of Evidence
- R16-4-110. Proof
- R16-4-111. Subpoenas
- R16-4-112. Records of a Hearing
- R16-4-113. Withdrawal
- R16-4-114. Ex Parte Communications
- R16-4-115. SBOE Decision
- R16-4-116. Review of the SBOE Decision
- R16-4-117. SBOE Member Participation in Matters before the SBOE

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

R16-4-101. Definitions

“Assessor” means the county assessor of the county in which the property at issue in an appeal is located.

“Chairman” means the presiding member of the panel of SBOE board members in a particular appeal hearing.

“Department” means the Arizona Department of Revenue (ADOR).

“Motion,” aside from parliamentary procedures, means a written or oral request to the SBOE for an order or ruling regarding an appeal.

“On-the-Record” means a hearing conducted by reviewing submitted documents without taking oral testimony or argument.

“Petitioner” means a taxpayer or other person qualified to file an appeal and appear before the SBOE and, if applicable, an authorized representative of the taxpayer.

“Respondent” means a person or entity qualified to answer an appeal filed by a petitioner.

“SBOE” means:

The State Board of Equalization,

A member of the SBOE,

A panel of members of the SBOE (see A.R.S. § 42-16156(B)(2) and (3)), or

A hearing officer employed by the SBOE under A.R.S. § 42-16155 to hear appeals.

“SBOE Chairman” means director of the SBOE as described in § A.R.S. 42-16154.

R16-4-102. Jurisdiction of the SBOE

A. The SBOE hears appeals regarding the valuation or legal classification of real and certain personal property made by the assessor or the Department.

B. The SBOE hears appeals by petitioners regarding:

1. A.R.S. § 42-15105. A notice from the assessor pertaining to the valuation or legal classification of new construction, additions to, deletions from or splits or consolidations of assessment parcels and changes in property use;
2. A.R.S. § 42-16053. The rejection by the assessor of a petition for failure to include substantial information;

3. A.R.S. § 42-16056. The decision by the assessor on a petition for review of valuation or legal classification;
 4. A.R.S. § 42-16157 or 42-16158. The decision by the assessor or the Department on a petition for review of valuation or legal classification;
 5. A.R.S. § 42-16252: A Notice of Proposed Correction decision issued by the assessor or the Department;
 6. A.R.S. § 42-16254: The decision made by the assessor or the Department regarding an error as described in A.R.S. § 42-16251(3) in a Notice of Claim;
 7. A.R.S. § 42-19052: The decision by the assessor pertaining to the valuation or legal classification of personal property; and
 8. A.R.S. § 42-19156: The decision by the assessor pertaining to the valuation of a mobile home.
- C. The SBOE hears an appeal by an assessor under A.R.S. § 42-16159 regarding an equalization order issued by the Department.
- D. The SBOE hears an appeal by the Department under A.R.S. § 42-16157 regarding a proposed valuation or legal classification or change in a valuation or legal classification made by the assessor.
- E. If the SBOE lacks jurisdiction regarding an appeal, the SBOE shall dismiss the appeal on its own motion.

R16-4-103. Representation before the SBOE

The following individuals may appear before the SBOE:

- A. An individual representing:
 1. The individual's interest,
 2. An estate or trust of which the individual is the legal representative,
 3. A partnership of which the individual is a partner, or
 4. A corporation or limited liability company of which the individual is an officer or an authorized representative,
- B. An attorney authorized to practice law in Arizona;
- C. A property tax agent, as defined at A.R.S. § 32-3651, who has been designated under A.R.S. § 42-16001;

- D. An authorized representative from the assessor's office;
- E. An authorized representative from the Department; and
- F. Other individuals allowed under Arizona Supreme Court Rule 39.

R16-4-104. Filing a Petition; Filing Deadlines

- A. To initiate an appeal under R16-4-102(B), a petitioner shall submit a petition to the SBOE.
 - 1. The petitioner shall use the correct petition form when initiating an appeal. The SBOE shall not accept a letter in place of the correct petition form. Except as noted, the correct petition forms are available on the Department's website and from an assessor.
 - a. Under A.R.S. §§ 42-15105, 42-16053, 42-16056, and 42-16157, the correct petition form is ADOR 82130 (for A.R.S. §§ 42-15105 the correct form is ADOR 82130NC);
 - b. Under A.R.S. § 42-16158, the correct petition form is SBOE EQ200, which is available on the SBOE website, or upon request from the SBOE;
 - c. Under A.R.S. § 42-16252, the correct petition form is ADOR 82179C;
 - d. Under A.R.S. § 42-16254, the correct petition form is ADOR 82179C-1; and
 - e. Under A.R.S. §§ 42-19052 and 42-19156, the correct petition form is ADOR 82530.
 - 2. If the petition is made under A.R.S. § 42-15105 and is submitted to the SBOE, the petitioner shall attach to the correct petition form a copy of the current form ADOR 82130AA, as applicable, which is available on the Department's website;
 - 3. The petitioner shall submit the correct petition form under subsection (A)(1) as follows:
 - a. Under A.R.S. § 42-15105 or § 42-16056, by U.S. Postal Service, by hand delivery to the SBOE office, or filed online using the SBOE Appeals application;
 - b. Under all other provisions, by U.S. Postal Service or hand delivery to the SBOE office.
 - 4. Submission of Petition to the SBOE.
 - a. The petitioner shall submit by mail or hand delivery to the SBOE with its petition:
 - i. A copy of the petition and attachments originally filed with the assessor or the Department; and
 - ii. A copy of the decision and attachments by the assessor or the Department regarding the original petition.

- b. For a petition electronically submitted to the SBOE under subsection (A)(3)(a), the petitioner shall complete the online form using the SBOE Appeals application. Those materials shown in (A)(4)(a)(i) and (ii) shall either be uploaded using the application or delivered to the SBOE in hard-copy form by hand or mail within 3 business days of the electronically-filed petition or the petition filing deadline, whichever is later. Petitioners may not use email to submit petitions and evidence.
 - c. Failure to comply with these requirements shall result in an administrative dismissal of the appeal.
5. Neither the Department nor the assessor forwards evidence previously submitted by the assessor or the Department to the SBOE. Parties to the hearing must submit evidence in person at the hearing or by U.S. postal service or hand delivered to arrive at the SBOE office three business days prior to the scheduled hearing:
- NUMBER OF COPIES:
- a. One copy of any evidence for property that is owner-occupied legal class 3 or another legal classification with a full-cash-value less than \$3 million;
 - b. Three copies of any evidence for property not described under subsection (A)(6)(a) and not valued by the Department; and
 - c. For property valued or classified by the Department under A.R.S. § 42-16158 at least 5-business days before the scheduled hearing, the petitioner and respondent shall deliver evidence to the respective parties as follows:
 - 1. The petitioner shall submit one copy of the evidence regarding the property valuation or classification to the Department, and five copies to the SBOE;
 - 2. The Department shall submit one copy of evidence regarding the property valuation or classification to the petitioner and five copies to the SBOE.
6. In compliance with A.R.S. § 42-16056 the SBOE may only consider issues previously raised with the assessor. The SBOE may admit new or additional evidence only if:
- a. The evidence directly relates to an issue previously raised with the assessor and
 - b. At least five business days before the scheduled hearing, the petitioner must provide, if applicable, amended income information, including an amended form ADOR 82300, and the appropriate income and expense form, to the assessor.

7. The SBOE will consider requests for multiple parcels, or petitions, to be heard together. The request must be made in writing, clearly identify all parcel numbers to be included and identify the qualifying basis (see A.R.S. 42-16051 et seq.) for the type of request described below:
 - a. The multiple parcels constitute a single economic unit;
 - b. The multiple petitions require a singular argument for all parcels;
 - c. The petitioner desires to hear multiple petitions on a single day's agenda;
 - d. The assessor's decision is for multiple parcels and the petitioner wants them heard together as a single appeal.
- B. To initiate an appeal under R16-4-102 (C) or (D), the Department or assessor shall submit a petition and proof of service of the appeal on the respondent to the SBOE before the date of the scheduled hearing.
- C. Arizona Revised Statutes creates deadlines for filing petitions to the SBOE. The petitioner is responsible to file the petition in accordance with the statute.
 1. The SBOE shall compute the period for filing a petition according to A.R.S. § 1-243.
 2. The taxpayer must properly deliver the petition to the SBOE office. The filing of the petition is timely if it:
 - a. Is received in the SBOE office before the end of the time-period;
 - b. Is postmarked on or before the end of the time period; or
 - c. Contains an electronic date that is on or before the end of the time-period.
- D. Evidence and testimony provided for SBOE consideration are, upon submission, rendered public information, unless restricted by law or court order. A.R.S. §§ 38-431 et seq., 39-121 et seq., and 42-2003(C)(1)(a).

R16-4-105. Motions

- A. A party shall:
 1. Serve a copy of any motion on all other parties. The party shall ensure a motion includes the factual and legal grounds supporting the motion and the requested action; and
 2. Submit proof of service on the other parties to the SBOE unless making the motion at the time of a scheduled hearing.
- B. A party may file a response stating any objection to the motion served under subsection (A).

- C. The SBOE, in its discretion, shall:
1. Decide whether to allow oral argument regarding a motion; and
 2. Decide whether to rule on a motion before or during a scheduled hearing. If the SBOE rules on a motion before a scheduled hearing, the SBOE shall serve the written ruling on all parties.

R16-4-106. Hearing

- A. As required under A.R.S. § 42-16163, the SBOE shall mail notice of an appeal hearing to all parties at least 14 days before the hearing. The SBOE shall include in the notice the date, time, and location of the hearing.
- B. Before a scheduled hearing, all members of the SBOE shall make known whether the member, as defined at A.R.S. § 38-502, has a substantial interest, as defined at A.R.S. § 38-502, in the matter to be heard by the SBOE. As required by A.R.S. § 38-509, the SBOE shall maintain the disclosure documents and make them available for public inspection.
- C. When the SBOE determines it is in the interest of the parties and the state, the SBOE shall allow one or all parties to participate in a hearing by telephone.

R16-4-107. On-the-Record Hearing; Failure to Appear

- A. Upon request of either party, the SBOE may conduct a hearing On-the-Record, only if all parties to the hearing agree.
- B. If all parties agree to an On-the-Record hearing, the SBOE shall review the evidence submitted by the parties, orally summarize the evidence for the record, and render a decision based on the submitted evidence.
- C. If the parties do not agree regarding an On-the-Record hearing, the SBOE shall:
1. Consider all the evidence submitted by the parties;
 2. Take oral testimony from or on behalf of the party opposing the On-the-Record hearing; and read the evidence into the record beginning with testimony by the petitioner, if present, or such submitted evidence followed by the testimony by the respondent, if present, or such submitted evidence; and
 3. Render a decision based on both the submitted evidence and oral testimony.

- D. If a party fails to appear at a scheduled hearing, the SBOE shall conduct the hearing as described in subsection (C).
- E. Consistent with R16-4-108(B), under both subsections (B) and (C); the SBOE shall enter the petitioner's evidence in the record before entering the respondent's evidence in the record.

R16-4-108. Hearing Procedure

- A. Unless otherwise provided by law, all SBOE hearings are open to the public.
- B. At a hearing, the SBOE shall ordinarily proceed as follows:
 - 1. Identification for the record of the docket number of the proceeding, the parcel number or account number of the property at issue, if applicable, the ownership of the subject property, the presiding SBOE member and/or members, and parties participating in the proceeding;
 - 2. Administration of oath or affirmation to all parties and witnesses who will offer testimony;
 - 3. The respondent will provide its recommendation for a reduction in noticed value or a change in legal class, if any; followed by opening statements by all parties, if requested by the SBOE;
 - 4. Presentation of testimony and evidence by the petitioner and witnesses;
 - 5. Presentation of testimony and evidence by the respondent and witnesses;
 - 6. Petitioner's rebuttal; and
 - 7. Questions by the SBOE; final arguments, if requested by the SBOE; and
 - 8. SBOE deliberation, motion, and the announcement of the decision.
 - 9. The decision of the SBOE shall include the full cash value, the applicable limited property value or limited property value rule, the legal classification or applicable legal classification allocation, and the assessment ratio.
- C. The SBOE may recess or continue a hearing for good cause.

R16-4-109. Rules of Evidence

- A. The SBOE shall accept oral evidence only when presented under oath or affirmation.
- B. The SBOE is not required to follow rules of evidence usually used in a court proceeding.

- C. The SBOE shall admit evidence that is relevant and not cumulative. The SBOE may consider objections to the admission of evidence in assigning weight to the evidence.
- D. At the SBOE's discretion, parties may call and examine witnesses, cross-examine witnesses, and introduce written evidence relevant to the proceeding.
- E. The SBOE may call and examine a witness and may examine a witness called by a party.
- F. The SBOE shall admit into evidence a copy of an original document if there is a showing of authenticity and relevance.

R16-4-110. Proof

Unless otherwise provided by law:

- A. The standard of proof in a hearing before the SBOE is a preponderance of the evidence, unless, some other standard of proof is required by law or statute. See e.g., A.R.S. § 42-16251(3)(e) which requires a standard of clear and convincing evidence;
- B. The decision made by the assessing agency is presumed to be correct. See e.g., A.R.S. § 42-16212(B). The petitioner has the burden to prove that the valuation and/or legal classification of the subject property is incorrect.

R16-4-111 Subpoenas

- A. In connection with a noticed hearing, the SBOE may issue a subpoena to compel the attendance of a witness at the hearing. A.R.S. § 42-16161(D)
 - 1. A party requesting a subpoena, or the SBOE on its own motion, shall file a written subpoena request, briefly stating the substance of the evidence sought and why the evidence is necessary for the hearing.
 - 2. The SBOE has discretion to issue or deny a subpoena based on the:
 - a. Relevance of the evidence sought,
 - b. Reasonable need for the evidence sought, and
 - c. Timeliness of the request.
- B A party requesting a subpoena shall:
 - 1. Draft the subpoena in the correct format, including:
 - a. The caption and docket number of the hearing;
 - b. The full name and address of the person ordered to appear;

- c. The time, date, and place to appear; and
 - d. The name, address, and telephone number of the party requesting the subpoena;
 2. Obtain the SBOE Chairman's signature on the subpoena;
 3. Ensure service of the subpoena on the person named in the subpoena under subsection (C); and
 4. Bear all subpoena-related costs.
- C. Unless otherwise provided by statute or administrative rule, a party requesting a subpoena shall have the subpoena served by a person who:
 1. Is at least age 18 and is not a party to the hearing;
 2. Delivers a copy of the subpoena to the person named in the subpoena;
 3. Hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
 4. Files with the SBOE a notarized proof of service, signed by the person who served the subpoena, certifying:
 - a. The date of service,
 - b. The manner of service,
 - c. The name of the person served, and
 - d. The amount of the mileage and witness fee paid.
- D. A party or a person served with a subpoena who objects to the subpoena may file an objection in writing with the SBOE. The party or person served with the subpoena shall:
 1. State in the objection the reasons for objecting and
 2. File the objection with the SBOE:
 - a. Within three days after service of the subpoena or
 - b. If the subpoena is served less than three days before the hearing, at the start of the hearing.
- E. The SBOE may quash or modify a subpoena if:
 1. The subpoena is unreasonable or imposes an undue burden or
 2. The evidence sought may be obtained by another method.
- F. Unless otherwise provided by statute or administrative rule, a party requesting a subpoena, or the SBOE, shall enforce the subpoena in the Superior Court of Arizona, in the appropriate

county. The party requesting enforcement shall name the SBOE as a party to any proceedings.

R16-4-112. Records of a Hearing

- A. The SBOE shall make a recording of every hearing. If a person makes a request by completing and submitting a Public Records Request form, the SBOE shall provide a copy of a hearing recording on its website, or any other electronic means, within three business days after the hearing. If the person wants a copy of the hearing recording in another format, the SBOE may charge the cost of providing the copy in the other format.
- B. At the party's expense, a party to a proceeding may record the proceeding using a recording device or court reporter.
- C. Subject to the limits imposed at A.R.S. § 39-121.03, a person may submit a written request to examine or be furnished a copy of a public record in the custody of the SBOE. As allowed under A.R.S. § §39-121.01(D)(1) and 39-121.03(A), the SBOE may charge a fee for providing a copy of a public record.
- D. While examining a public record, a person shall not remove the public record from the SBOE office.

R16-4-113. Withdrawal

- A. The petitioner may withdraw an appeal by providing written notice to the SBOE with a copy delivered to the respondent at least three business days prior to the scheduled hearing.
- B. If the petitioner submits a written notice of withdrawal to the SBOE fewer than two business days prior to the hearing or if the petitioner submits a written or oral notice of withdrawal at the hearing, the SBOE shall treat the request as a motion.

R16-4-114. Ex Parte Communications

- A. A party shall not communicate, either directly or indirectly, with a member of the SBOE about a substantive issue in a pending appeal unless:
 - 1. All parties are present,
 - 2. During a scheduled hearing where an absent party fails to appear after proper notice, or,
 - 3. By written motion where all parties receive a copy of the motion.

- B. If a member of the SBOE has received ex parte communications regarding an appeal, the member shall not participate in the appeal.

R16-4-115. SBOE Decision

- A. The SBOE shall mail a written copy of the decision within a reasonable time after the conclusion of the hearing. A.R.S. § 42-16164
- B. In its decision, the SBOE shall include the following:
 - 1. Docket number of the appeal;
 - 2. Parcel number or other identification of the property at issue;
 - 3. Separately stated findings of fact and conclusions of law;
 - 4. The decision regarding the property valuation or classification;
 - 5. Other matters before the SBOE related to the appeal; and
 - 6. The right of an aggrieved party to appeal the SBOE’s decision under A.R.S. § 42-16203 or § 42-16254(G).
- C. The SBOE shall mail a copy of the written decision to all parties and to the Department.

R16-4-116 Review of the SBOE Decision

- A. A party does not exhaust its administrative remedies after a hearing and decision by the SBOE if the party does not file a motion for rehearing or review.
- B. The SBOE may not rehear or review a decision if any of the following have occurred:
 - 1. A party has appealed the SBOE decision with the Arizona Tax Court or the time limit for appeal has expired pursuant to A.R.S. §§ 42-16168, 42-16203, or 42-16254(G).
 - 2. Expiration of a relevant statutory deadline pursuant to A.R.S. § 42-16165.
 - 3. The SBOE does not have jurisdiction over the matter for any other reason.
- C. No later than 10 days after a hearing in which the SBOE announced a decision, any party to that hearing may, pursuant to A.R.S. § 41-1062(B), file with the SBOE Chairman a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before the SBOE Chairman rules upon the motion.

- D. A rehearing or review of the decision may be granted only for any one of the following causes that materially affect the rights of the moving party:
1. Any irregularity in the proceedings or abuse of discretion depriving the party of a fair hearing;
 2. Misconduct by a SBOE member, hearing officer or panel assigned to the hearing, or by the prevailing party;
 3. Accident or surprise that could not reasonably have been prevented;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
 6. The findings of fact or decision is arbitrary, capricious, or an abuse of discretion; or
 7. The evidence does not support the findings of fact and/or the decision or is contrary to law.
- E. To file a motion for rehearing or review, a filing party shall specify in the motion the grounds on which the motion is based, and shall set forth facts and law in support of the rehearing or review. The affidavits must be served with the motion when a motion for rehearing or review is based upon affidavits.
- F. Any party may file a response to the motion within 10 days after the motion is served. Such a response may include supporting affidavits.
- G. Upon review of a motion for rehearing or review of the decision, and any response, the SBOE Chairman shall issue a ruling granting or denying the motion. If granted, the SBOE Chairman may modify the decision or grant a rehearing. An order granting a rehearing shall specify, with particularity, the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the original hearing may participate as parties at a rehearing.
- H. The SBOE Chairman, may on the SBOE Chairman's own initiative, order a rehearing or review of the SBOE decision for any reason for which a rehearing or review might have been granted on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the SBOE Chairman may grant a motion for rehearing or review,

timely served, for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the ground therefor.

- I. At any time after a motion for rehearing or review is received by the SBOE or, the SBOE Chairman has ordered a rehearing or review, the SBOE Chairman may assign the case to an SBOE member or panel of SBOE members for rehearing or review.

R16-4-117. SBOE Member Participation in Matters before the SBOE

- A. A member of the SBOE shall comply with A.R.S. Title 38, Chapter 3, Article 8, regarding conflicts of interest. This requires, but not limited to:
 1. Refraining from participating in any manner in a SBOE decision regarding property in which the member or the member's relative has a substantial interest; and
 2. Refraining from participating in any manner in a SBOE decision regarding a petition submitted to the SBOE by an entity in which the member, or the member's relative, has a substantial interest.
- B. Remedies and penalties for violating A.R.S. Title 38, Chapter 3, Article 8 are specified at A.R.S. §§ 38-506 and 38-510.
- C. Members of the SBOE shall comply with the Open Meeting Laws of Arizona.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT¹
TITLE 16. TAX APPEALS
CHAPTER 4. STATE BOARD OF EQUALIZATION

1. Identification of the rulemaking:

The State Board of Equalization (SBOE) is required under A.R.S. § 42-16154(C) to make rules of procedure for hearings before the SBOE. In 1996, the SBOE made the required rules using the emergency rulemaking procedure. Under the provisions of A.R.S. § 41-1026, the rules expired on July 30, 1996. Since then, the SBOE has functioned with procedures that have not been formally made as rules. In this rulemaking, the SBOE makes the required rules.

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

Until the rulemaking is completed, the SBOE will not comply with its statutory responsibility to make rules.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government for a state agency to fail to comply with statute.

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

When the rulemaking is completed, the SBOE will comply with its statutory responsibility to make rules.

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

The SBOE expects the rulemaking to have minimal economic impact. The SBOE is simply making the rules required by statute. A taxpayer that wishes to appeal to the SBOE will incur the cost of complying with these rules when making the appeal. The rules are designed to ensure due process for all petitioners. A taxpayer that appeals to

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

the SBOE does so because the taxpayer has determined the potential benefits of appealing outweigh the costs of complying with the rules.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: George Shook

Address: 100 N 15th Ave, Suite 130, Phoenix, AZ 85007

Telephone:(602) 364-1600

Fax: (602) 364-1616

E-mail:gshook@sboe.state.az.us

Web site: www.sboe.state.az.us

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

Property owners, taxpayers, may appeal the valuation or classification placed on their property by the County Assessors of Arizona or the Arizona Department of Revenue (Department). Taxpayers who appeal to the SBOE a valuation or classification of real or personal property are directly affected by, bear the costs of, and directly benefit from the rulemaking. In limited instances, a county assessor or the Department may appeal to the SBOE in the same manner as a taxpayer. The taxpayer incurs the cost of complying with the requirements in statute and rule and receives the benefit of a fair hearing regarding, and due process, regarding the valuation or classification at issue. In the past, the SBOE has conducted more than 16,000 appeal hearings in a single year. During 2020, the SBOE received 2,329 appeals and conducted 2,320 hearings. During 2020, neither an assessor nor the Department filed an appeal to the SBOE. The Chairman of the SBOE initiated two reviews of a SBOE decision under A.R.S. § 42-16164(A).

Rulemaking also directly affects the SBOE. The SBOE incurred the expense of completing the rulemaking and will incur the expense of implementing the rules. The SBOE will have the benefit of complying with the statutory requirement that it make rules and will have rules that help ensure the fair and equitable treatment of all petitioners.

Funding for the SBOE is by the state's general fund. Its appropriation for FY2021 is \$673,000. The SBOE has three FTEs. The SBOE consists of 41 members, 20 of whom are appointed by county assessors and the governor appoints 21 members.

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 SBOE is the only state agency directly affected by this rulemaking. It will not need to employ an additional FTE to implement and enforce the rules.

b. **Costs and benefits to political subdivisions directly affected by the rulemaking:**

If a county assessor appeals under A.R.S. § 42-16159 regarding an equalization order issued by the Department or the Department appeals under A.R.S. § 42-16157 regarding a proposed valuation or classification or change in a valuation or classification made by an assessor, both will bear the same costs and have the same benefits as any other petitioner.

c. **Costs and benefits to businesses directly affected by the rulemaking:**

A business that owns real property may file an appeal in the same manner as any other taxpayer and will bear the same costs and have the same benefits as any other petitioner.

6. Impact on private and public employment:

The SBOE expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses²:

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

A small business that owns real property may appeal to the SBOE in the same manner as any other taxpayer.

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

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

Any taxpayer, including a small business, must file a petition to initiate an appeal with the SBOE. The taxpayer is required to submit evidence to support the petition and must comply with applicable deadlines. The taxpayer must attend the hearing unless the taxpayer chooses to have the issue decided on the record. The taxpayer has the burden of proof at a hearing.

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

The administrative and other costs required for compliance with the rulemaking are minimal and voluntarily assumed by a taxpayer, including a small business, which wishes to appeal the valuation or classification of real property. The SBOE believes the minimal costs of compliance cannot be reduced for taxpayers that are small businesses.

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

Taxpayers that appeal to the SBOE are the only private persons directly affected by the rulemaking. Their costs and benefits are described above. No consumers are directly affected by the rulemaking.

9. **Probable effects on state revenues:**

There will be no effect on state revenues.

10. **Least intrusive or less costly alternative methods considered:**

The SBOE believes the methods specified in the rulemaking are the least intrusive and least costly possible. The SBOE sought alternative methods for providing these services and found none.



August 30, 2020

Via Mail: certified/return receipt request

Via Email: gshook@sboe.state.az.us

Mr. George Shook
Acting Chairman Arizona State Board of Equalization
100 North 15th Avenue, Suite 130
Phoenix, AZ 85007

Re: Concerns and Constructive Criticism, for Working Draft New Agency Rules Summer 2020

Dear Mr. Shook,

This letter is provided to you regarding real concerns and criticisms relating to the State Board of Equalization ("SBOE") draft working rules with Notice of Rulemaking Docket Opening XX A.A.R. XXX August XX, 2020.

It is our understanding that the working draft provided to me is a working draft in progress. That is, it will be sent out to stake holders, etc. in the coming months for review, comment and suggestions. I would have appeared and offered comment personally or via zoom (or zoom like mechanism) but we are unaware of rule work sessions or meetings for participation at this stage. The comments and suggestions below are made with an eye towards transparency, equality between the parties, current process management and clear parameters for both parties to comprehend and follow.

For purposes of this letter, "Taxpayer" is also known as the "Petitioner" and is the party filing the petition for review. Further, the "Respondent" means the Assessor office, other governmental entity or other government representative qualified to respond to and/or answer an appeal petition by Taxpayer &/or its representative.

Please note in May 2018 we also reviewed and provided a letter to your Agency regarding the then draft rules version. Much of the same concerns continue and have not been addressed. Some examples are addressed below.

Below are some, (but not a complete list of), concerns/criticisms we ask the SBOE to address and remedy as it works to finalize its working draft of the rules. Please keep us notified on any public meetings, stake holder meeting and/or otherwise as the process moves forward.

In summary, the current 2020 draft rules:

- (i) Impose new and unnecessary regulatory burdens on the Taxpayer/Petitioner;
- (ii) Increase Taxpayer costs;



- (iii) Fail to require *quid pro quo* between the Respondent Assessor and the Taxpayer Petition;
- (iv) Increase required responsibilities and burden of submissions and proof of the Taxpayer Petitioner for the appeal process (filing, timing, hearing, etc.);
- (v) Respondent (Assessor) necessary and required disclosures are not addressed;
- (vi) Do not reflect various current administrative filing, appeal process and hearing protocols with clarity;
- (vii) Imbue a blanket, discretionary review of any and all decisions of SBOE hearings to the 'chairman of the SBOE' which is not defined and other undefined terms.

For instance, is this the 'chairman of the SBOE' that certain chairman from the hearing on the day it was heard? Or, rather the Director of the SBOE as an appointed position? And, the scope is overly broad without defined terms of 'irregularity', 'accident or surprise' and/or 'error of law'. Or, who is the decision maker of an 'error of law'?).

- (viii) Do not impartially allocate requirements among the parties – treats different parties differently; and
- (ix) Are unclear how and when petitions, attachments and pre-hearing submittals and/or new requirements for materials are to be hard mailed, electronically mailed, uploaded via SBOE website link and/or otherwise allowed to be provided to the SBOE.

The draft rules increase Taxpayer obligations while remaining silent or reduce the Respondent Assessor's reciprocal obligations – I.E. - to disclose materials prior to hearings, participate in SBOE Hearings in a meaningful way, etc. This creates an imbalance of power and increases Taxpayer expense to enter and use the administrative hearing process.

A few concrete examples of the above are given below. We ask that the draft Rules be improved to not burden the Taxpayer further and be made clearer regarding the submittal process and particulars.

1. R16-4-101 Definitions

The Definition section appears to be missing the following, included but not limited to, words based on reading the working draft:

- ADOR – Arizona Department of Revenue?
- Affirmation – what is Affirmation?
- Authorized Assessor/Respondent Representative – County assessor appraiser?

- Board – which board? Is this SBOE as a whole? As a sitting panel or 1 SBOE Bord member sitting?
- Board Member – which board? SBOE or otherwise?
- Chairman – of what? A hearing? Of the SBOE as a whole?
- Director - of SBOE as a whole as an appointed position?

Confusing definitions and/or wording:

Note, 'Motion' is defined by stating 'aside from parliamentary procedures' – what does this mean or reference? Robert's Rules apply to the hearings now? To the SBOE as whole?

Advisement 'Review' is defined as 'quasi-judicial consideration' in the draft; What is this referring to?

'SBOE' is also defined in multiple ways: State Board of Equalization as a 'whole entity'?. Then as a member of the SBOE, and as a panel of members of the SBOE, etc. ~~The SBOE is the State Board of Equalization as a whole. A member of the SBOE is a SBOE Board Member (for instance, etc.).~~

Spell-out

2. R16-4-102 Jurisdiction of the SBOE

- Draft language for B:
 - o B.1 – 'property assessment changes' – what does this new wording mean?
 - o B.6. – why was 'or an error in the tax rate' removed since the last draft in 2018'?
 - o Perhaps the following is a missing items to add?- Improvements on Possessory Rights (IPRs)

COUNTY
ALSO 49-11004
11005

3. R16-4-104 Filing a Petition; Filing deadlines

This section appears to be missing reference to bulk filings, electronic filings and other electronically available mechanisms the SBOE uses.

A.3.b. –

'Under all other provisions' referencing hard mail only as a requirement is confusing if the SBOE allows electronic filings or via email.

A.4.c. and A.5 –

'evidence originally' filed to the assessor is unclear. If there is an electronic filing completed for an appeal to the SBOE, it now also asks for hard copies of the electronic filing? And then the Taxpayer/Petitioner is to provide another submission in triplicate of a written briefing and the respondent government is not so required? This is not the current process and appears unbalanced between the parties and a new requirement.

A.6. New procedure in this draft –

Written brief, presentation, etc. in advance for Taxpayer/Petitioner only



As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally prepare and submit a written briefing or submission presentation for the hearing. *This is not current practice.* It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.

A.6.a, b, and c. – Evidence

New procedure in this draft - As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally submit hard copy submittals of any evidence for the property in the petition. *This is not current practice.* It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.

In conversation, the SBOE personnel indicated only updated income method filings would be required to be submitted in advance of a hearing. The new rules draft wording is NOT limited to an update income filing.

A.7. – New SBOE limitation on evidence (new or additional).

This concept would be a new procedure and appears to actually limit the taxpayer/petitioner hearing information allowed to be used and ‘at the discretion’ of the board /hearing members.

D. SBOE respect for ‘Confidentiality’ designation.

The new section does not treat the parties equally. There is no mention of Taxpayer/Petitioner submittal information being or remaining confidential if it was provided and/or submittal as confidential (or noted as confidential) by the Taxpayer/Petitioner

4. R16-4-105 Motions

See, for example, C.2. – the SBOE board may rule before a hearing is done where evidence would be provided? This is not ‘due process’. Idea - Perhaps this section should include a mechanism of oral argument request vs. ‘on the record motions’

5. R16-4-106 Hearing.

B. ‘Board’ – this needs to be defined.

C. SBOE discretion to allow telephonic hearings? If the taxpayer/respondent or assessor requests this, why not? What about zoom or other electronic formats not addressed?

6. R16-4-107 ‘On-the-Record’ Hearing; Failure to Appear

- A. What does 'for the convenience of the board' mean here?
- D. Unable to follow - should this read 'in subsection (B)'?

7. R16-4-108 Hearing Procedures

B.1. 'board members'- Is this reference to the SBOE panel member or member presiding over the hearing?

B.3. Currently, at each hearing the person or panel of the SBOE members hearing the petition do the following: (1) asks if the Assessor rep has a recommendation to the SBOE; (2) asks if there is a recommendation by the assessor - if the taxpayer/ petitioner accepts it or would like to comment and/or continue to opening remarks; (3) if no assessor recommendation to the SBOE – the taxpayer/ petitioner is asked to make their initial remarks and presentation of information/evidence and notifies the taxpayer/petitioner they will have an opportunity for rebuttal after the respondent responds to the taxpayer/petitioner initial remarks and presentation.

This new rule appears to only allow initial remarks and presentation by the taxpayer/petitioner if an opening statement is allowed at the discretion of the SBOE. This does not follow current procedure.

C. This new paragraph is confusing. It appears to allow the SBOE presiding person or persons to require additional evidence. What is its purpose?

E. 'As required by law...' What is this referring to? This is an unclear new parameter.

8. R16-4-109 Rules of Evidence

- C. Draft language for C- IMPORTANT – reference to 'R16-4-104(A)(6)' this is a reference to allowable Evidence. See above concerns, thoughts and ideas for clarification regarding R16-4-104.
- D. Draft language for D- 'At the Board's discretion' – what does this mean? What are the parameters? What is this supposed to do?

9. R16-4-110 Proof

Burden of proof for what? To show the property is overvalued? Incorrect? Not concurrent with similar properties similarly situated per law or something else?

10. R16-4-116 Review of SBOE Decisions



- A. 'the chairman'. For what? ARS 42-16161(A) states "The chairman of the state board may review any decision to ensure due process to all parties." But this new draft rule appears to expand that scope significantly.

For instance:

Draft A.2. states 'irregularity, abuse of discretion or misconduct by a party'

Draft A.3. states 'accident or surprise that could have been prevented by ordinary prudence.'

Draft A.5. 'Errors' - various types of possible errors are addressed here. This does not appear to be a 'due process' element from current draft context.

The two above examples (are some but not all) of scope increase appear to be well beyond simply to 'ensure due process to all parties'. Please review this section carefully.

Also, below are few general regulatory burden increase, inequality and confusing matters for your review and adjustment:

Regulatory & Practical Concern/Criticism:

1. Use of ambiguous and confusing language.
2. Lack of definitions in some instances.
3. Draft procedures do not represent hearing practices in place.
4. Significant new taxpayer/petitioner submittal requirements.
5. What is the respondent Assessor's obligation for filing, evidence, briefing, exchange of materials?
6. Unequal requirements between the parties.
7. R16-4-104 Filing a Petition –
 - a. This new draft rule significantly deviates from the actual filing and then hearing process and protocols.
 - b. A new requirement of pre-submission of materials includes Taxpayers' written materials to the SBOE in advance of the hearing **but not the Assessor Respondents. This is an unequal burden application.**

For years, the process has been that the Taxpayer brings its material to the hearing and provides it to the SBOE in 'real time' at the hearing.

The new draft rules place new, additional and onerous regulatory burdens on, and added cost to, the Taxpayers to prepare and file a petition. It would require that Taxpayers make an additional submission to the SBOE of essentially a 'position paper' in advance upon filing and/or various days in advance of a scheduled hearing. *Respectfully, if the SBOE thinks there is some good cause for this, why is the same burden not imposed on the Assessor?*



In addition, the draft SBOE Rules adjust notice of hearing schedule giving the Taxpayer/Petitioner fourteen (14) days notice of a SBOE hearing. This results in that the Taxpayer/Petitioner then immediately would be required to create and submit a 'position paper' and submit one, three or more copies via hard mail. The process is confusing in its wording. This is a significant deviation from current procedure and unnecessary cost to the Taxpayer.

8. Income Method Specificity - Based on our previous correspondence via email and in person, you informed me the rule to require submittal of evidence *is to only be applicable and relate to new income materials*. That is not what the draft rules indicate.

Please remember that we were told various times this new submittal requirement is only to apply to 'new income' materials to avoid confusion.

While this new language burdens the Taxpayer Petitioner the draft rules fail to place the same burden on the Assessor. - Why is the Assessor Respondent not equally burdened and required to provide the above to the Taxpayer?

Summary:

Once more, we ask in good faith that you take the above concerns and criticism of the *summer August 2020 draft Rules* into account in the redrafts. A balanced approach that does not further burden the Taxpayer with unnecessary expense and regulatory hurdles is preferred.

Fairness and equity between the Taxpayer Petitioner and Assessor Respondent should be the guidepost. The balance between the parties should be equitable; and Assessor Respondent materials and information readily accessible to the Taxpayer.

Please contact me with questions or comments. Rules are important and should be clear, equitable and understandable. We appreciate the SBOE's work on the draft to date and are available to work through the above and other wording concerns/criticisms if you are interested.

Thank you for your time and attention.

Respectfully Submitted:

Very Truly Yours,

Jodi A. Bain
Jodi A. Bain, M.A., J.D., LL.M.



Proposed Rules

message

ry Chandler <mzchandler3@gmail.com>
George Shook <gshook@sboe.az.gov>

Wed, Oct 7, 2020 at 9:30 AM

Dear George,
We have discussed this many times in our sessions on the proposed rules. Petitioner's rebuttal does NOT come after FINAL arguments. In Rule R16-4-108 B Paragraph "6. Questions by the Board; final arguments, if requested by the Board;" needs to come AFTER Paragraph "7. Petitioner's rebuttal; and" We thought you had corrected this before. Now the inappropriate order has once again been incorporated in the rules. Please correct this. Paragraph 6 should read: "6. Petitioner's rebuttal;". Paragraph 7 should read "7. Questions by the Board; final arguments, if requested by the Board; and".
Thank you.
Gary



E: SBOE Proposed Rulemaking

message

xDetective <support@taxdetective.com>
George Shook <gshook@sboe.az.gov>

Mon, Sep 28, 2020 at 4:17 AM

George,

Received and reviewed, thank you.

My comments would be, in general, to include the use of email and telephone as acceptable methods in SBOE communications and hearings statewide. Thank you for your leadership. -Paul

From: George Shook <gshook@sboe.az.gov>
Sent: Sunday, September 27, 2020 7:24 PM
To: Jodi Bain <jbain@bifaz.com>; appeals@pivotaltax.com; neil_r_wolfe@yahoo.com; William Ryan <WILLIAM@wayfindertaxrelief.com>; Drouble, Suzanne @ Tucson <suzanne.drouble@cbre.com>;
TaxDetective Support <support@taxdetective.com>; dproelke@gmail.com; rickedwards@mfpoe.com; appeals@integrapiets.com; Specht, Beth <beth.specht@ryan.com>; Domingos Santos <ds@santosiawpllc.com>;
carson@propertytaxrelief.com; Naifeh <naifeh@sagetaxappeals.com>; Barney, Stephen <sbarney@azdor.gov>; Frank Boucek <fboucek@azdor.gov>; Frank Dudley <FDudley@azdor.gov>; Frankie Woodard
woodardf@mail.maricopa.gov
Subject: SBOE Proposed Rulemaking

Please see the attached Notice of Meeting.

The SBOE will receive public comment regarding the SBOE Proposed Rulemaking by email or in writing by October 7, 2020. A Google Meet online meeting will be held on the dates specified. The proposed rules are filed at the Secretary of State's office and at

<https://sboe.az.gov/content/sboe-notice-proposed-rulemaking-2020>.

Please use the following email address for comments you may want to submit. webmaster@sboe.az.gov

Thank you,

George R. Shook
Acting Chairman Arizona State Board of Equalization
Direct: 602-364-1611 Main: 602-364-1600



wd: SBOE Proposed Rulemaking

message

Tue, Sep 29, 2020 at 4:28 PM

Jolene Christopherson <jchristopherson@azdor.gov>
George Shook <gshook@sboe.az.gov>, Christia Rush <crush@sboe.az.gov>

Hi George and Christa,

Frank forwarded me a copy of the SBOE Proposed Rulemaking. I reviewed and had a question for clarification if I may ask. R16-4-107A - The SBOE shall conduct a hearing entirely on-the-record, for the convenience of the board, and only if all parties to the hearing agree.

Is this only for the purposes of COVID? Or, is it intended to be the method of delivery post COVID as well?

Thanks,



Jolene Christopherson
Manager Training and Certification
Personal Property and Manuals
Arizona Department of Revenue
(602) 716-6840

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----- Forwarded message -----

From: **Frank Boucek** <fboucek@azdor.gov>
Date: Mon, Sep 28, 2020 at 11:16 AM
Subject: Fwd: SBOE Proposed Rulemaking
To: Jolene Christopherson <jchristopherson@azdor.gov>, Jerry Fries <jfries@azag.gov>, Neuville, Lisa <Lisa.Neuville@azag.gov>, Darren Rasmussen <drasmussen@azdor.gov>

Looping in a few more people. I took a quick look and the rules looked largely the same as I remember them from the past. They include rules about hearing procedures for CVP.

Frank

----- Forwarded message -----

From: **George Shook** <gshook@sboe.az.gov>
Date: Sun, Sep 27, 2020 at 7:24 PM
Subject: SBOE Proposed Rulemaking
To: Jodi Bain <jbain@bifaz.com>, <info@proptaxeval.com>, <neil_r_wolfe@yahoo.com>, William Ryan <WILLIAM@wayfindertaxrelief.com>, Drouble, Suzanne @ Tucson <suzyanne.drouble@cbre.com>, TaxDetective Support <support@taxdetective.com>, <dproelke@gmail.com>, <trickwards@mfpoeer.com>, <appeals@integraltips.com>, Specht, Beth <beth.specht@ryan.com>, Domingos Santos <ds@santoslawpllc.com>, <ccarson@propertytaxrelief.com>, Naifeh <naifeh@sagetaxappeals.com>, Barney, Stephen <sbamey@azdor.gov>, Frank Boucek <fboucek@azdor.gov>, Frank Dudley <FDudley@azdor.gov>, Frankie Woodard <woodardf@mail.maricopa.gov>

Please see the attached Notice of Meeting.

the above will receive public comment regarding the above proposed rulemaking by email or in writing by October 1, 2020. A Google Meet online meeting will be held on the dates specified. The proposed rules are filed at the Secretary of State's office and at <https://sboe.az.gov/content/sboe-notice-proposed-rulemaking-2020>.

Please use the following email address for comments you may want to submit. webmaster@sboe.az.gov

Thank you,

George R. Shook
Acting Chairman Arizona State Board of Equalization
Direct: 602-364-1611 Main: 602-364-1600

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2 attachments

 **Agenda 9 27 2020.pdf**
35K

 **Public Comment Meeting.pdf**
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9-30-20

To: George Shook

From: Dan Swango

Re: **"Notice of Supplemental Proposed RuleMaking. Title 16. Tax Appeals. Chapter 4. State Board of Equalization"**

Specifically: **Article 1. Item R16-4-101. "Definitions"**

For terminology clarity, I suggest that consideration be given to adding the word "Chairman" to the list of definitions. This would make clear that Chairman refers to the governor appointed head of SBOE and not to the chairman of a panel of hearing officers in a hearing.

Suggested wording:

"Chairman" means the Chairman of the State Board of Equalization as defined and described in ARS 42-16154. (In these Rules the word "chairman" does *not* refer to the chairman of a panel of hearing officers conducting a hearing.)

2020 OCT -4 PM 3:20

RECEIVED
STATE BOARD OF
EQUALIZATION

In attendance
Gail Sharp

(Not rules related) In Cochise County the petitioner is using the telephone to attend appeal hearings. If Cochise County is using Microsoft Teams then why isn't the petitioner also using Microsoft teams?

16-4-104

GSharp: Once these rules are set and put into place that when we file a petition to the State Board, we need a copy of the assessor's decision and anything they attach to that decision or we may not get a favorable decision? It'll be different than what it's been this year, year before, so on? GS: No, I don't think that is different. Rules we are writing does not change what we are doing now. What we are experiencing now is that we are getting just 1 page of the decision and that is not complete. We accept the appeal and in the hearing room the hearing officer will vet it.

Susan Fair -

Kathryn Ann - Property Tax Evaluations

One of the concerns about submitting appeals to the State Board is the Assessor's decision as well as all copies of the decision that was sent to the Assessor. In year's past we just sent page 1 of the Assessor's decision and the Agent Authorization. That's why I am concerned this year and I have questions on that very thing whether to send all the documentation that was attached. Now that I understand that is the procedure going forward each year.

In the past, when the Assessor's came into the hearings and they provided all of their backup information to the Board Members. Now that they Assessor does not attend the hearing, it just leaves the petitioner on their own and then the Board Members aren't receiving all of the information from the Assessor where in the past they were directly from the Assessor when they came into the meeting. Now we will be making sure to ask the petitioner to provide all of the information to the Board. With the electronic submission, it is three days prior. Are you saying 5 days prior?

GS: We are asking in the rules that the petitioner provide the Assessor's decision within 5 days of filing electronically.

Susan Fair - On the Records, they can be difficult because you have to read in the information that the petitioner has submitted and with 20 pages of evidence it is very difficult to read everything in that hearing.

Not in the Rules - GS: Sometimes the evidence does not get transmitted to all parties in time for the hearing. If the evidence is not in the hearing room then it is up to the panel or the hearing officer to determine if the Board will allow that evidence. the petitioner that wants to add the evidence must convince the Board of its relevance and then the Board will make a decision of its relevance as well as the decision to delay the hearing, postpone the hearing or have the hearing rescheduled.

Daniel Swango: Would there be any problem with hearings that are scheduled for fairly late in the appeal season that they may not have the opportunity to have a hearing rescheduled due to the statutory deadline?

DS: Overall - Is there something in statute that covers such unique situations? There may be variances from these rules under extreme circumstances. For example, extended internet or power outages, a pandemic that may affect evidence processing.



Webmaster - SBOE <webmaster@sboe.az.gov>

Letter of Concern - SBOE Proposed New Draft Rules

1 message

Jodi Bain <jbain@blfaz.com>

Mon, Oct 18, 2021 at 8:26 AM

To: George Shook <gshook@sboe.az.gov>

Cc: Ashley Gonzalez <agonzalez@blfaz.com>, Webmaster - SBOE <webmaster@sboe.az.gov>

Mr. George Shook,

Good morning.

See attached Letter of Concern as submission required today for the Arizona State Board of Equalization (SBOE) proposed new rules.

We appreciate your time, consideration and attention to these important matters.

Thank you and please confirm receipt.

Very Truly Yours,

Jodi A. Bain, M.A., J.D., LL.M.

Direct: 520.203.3044

Office: 520.777.3747

jbain@blfaz.com

Tax, Real Estate, Business & Regulatory

BLFAZ.com



Jodi A. Bain (Sundt)
Partner

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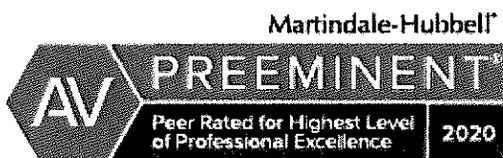
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Letter of Concern - SBOE Proposed Revised Rules Sept-Oct 2021 wExA- October 17, 2021 (fin).pdf

430K



October 17, 2021

Via Mail: certified/return receipt request

Via Email: gshook@sboe.state.az.us

Mr. George Shook
Acting Chairman Arizona State Board of Equalization
100 North 15th Avenue, Suite 130
Phoenix, AZ 85007

**Re: Letter - Concerns and Constructive Criticism, for Proposed Revised New Agency Rules
September 2021 ("Letter")**

Dear Mr. Shook,

This letter is provided to you regarding real concerns, consideration and criticisms relating to the State Board of Equalization ("SBOE") proposed revised draft rules per:

Notice of Rulemaking Docket Opening 26 A.A.R. 1708

Notice of Proposed Rulemaking: 26 A.A.R. 1679

Notice of Supplemental Rulemaking Docket Opening XX A.A.R. XXXX

It is our understanding that the September 2021 proposed revised draft rules version provided via SBOE website agenda is a working draft in progress. I would have appeared and offered comment personally or via zoom (or zoom like mechanism) but we are unaware of rule work sessions or meetings for participation at this stage in that mechanism.

The comments and suggestions below are made in addition to the prior comment and concern letters submitted. Items already addressed in prior '*Concerns and Constructive Criticism*' letter may not be addressed below for brevity sake. Instead, the prior comment and concern letter is attached hereto as **Exhibit A** and incorporated by reference into this Letter.

Please note in August 2020 we also reviewed and provided a letter to your Agency regarding the then draft rules version. Various *prior comments and concerns have not been addressed nor clarified*. Additionally, some new adjustments / changes appear to have been made that prejudice 'due process' to the taxpayer petition. *New comments per new proposed draft items are indicated in green font.*

For purposes of this Letter, "Taxpayer" is also known as the "Petitioner" and is the party filing the petition for review. Further, the "Respondent" means the Assessor office, other governmental entity or other government representative qualified to respond to and/or answer an appeal petition by Taxpayer &/or its representative. ARS means Arizona Revised Statutes.

Below are some, (but not a complete list of), concerns/criticisms we ask the SBOE to address and remedy as it works to finalize its new rules. Please keep us notified on any public meetings, stake holder meeting and/or otherwise as the process moves forward. This additional comment and concern letter is provided to ensure transparency, equality between the parties, simplified appeal process management and clear parameters for the users and parties to comprehend and follow.

In summary, below are the main concerns identified in review of the September 2021 proposed revised draft rules:

- (i) Impose new and unnecessary regulatory burdens on the Taxpayer/Petitioner;
- (ii) Increase required responsibilities and burden of submissions and proof of the Taxpayer Petitioner for the appeal process (filing, timing, hearing, etc.);
- (iii) Fail to address and confirm the Assessor (Respondent) to be bound by law to present its valuation evidence (materials used to value the property) as of January 1 for that tax year per notice of value per date of value (January 1) Arizona statutory requirements.
- (iv) Fails to affirm the confidentiality of income and other related matters as prescribed by statute;
- (v) Increase Taxpayer costs;
- (vi) Fail to require *quid pro quo* between the Respondent Assessor and the Taxpayer Petitioner;
- (vii) Does not impartially allocate requirements among the parties – treats different parties differently – I.E. does not address the Assessor (Respondent) obligations *to the Taxpayer Petitioner* of disclosure of materials;
- (viii) Does not reflect various current administrative filing, appeal process and hearing protocols with clarity; and
- (ix) Chairman full discretion for elective, subjective review and rehearing is overly broad and discretionary.

The proposed revised rules continue to increase Taxpayer obligations while remaining silent or reduce the Respondent Assessor's reciprocal obligations. An imbalance of power between Taxpayer and Government while increasing Taxpayer expense to enter and use the administrative hearing process is not ok. *This Letter is submitted to request that the draft Rules be improved to not burden the Taxpayer disproportionately.*

1. R16-4-101 Definitions – Remains not addressed
See Exhibit A per previous August 2020 submittal.
2. R16-4-102 Jurisdiction of the SBOE - Remains not addressed
See Exhibit A per previous August 2020 submittal.
3. R16-4-104 Filing a Petition; Filing deadlines - Remains not addressed

This section appears to be missing reference to bulk filings, electronic filings and other electronically available mechanisms the SBOE uses.

A.3.b. –

'Under all other provisions' referencing hard mail only as a requirement is confusing if the SBOE allows electronic filings or via email.

A.4.a .ii – SUBMISSION OF THE PETITION TO THE SBOE (Taxpayer filing to SBOE)
Revised to require Taxpayer to provide the SBOE Assessor materials.

This new wording adding 'attachment' now requires the Taxpayer to provide Assessor materials to the SBOE.

Taxpayer is not responsible to provide to the SBOE the Assessor materials.

This is beyond the scope of the taxpayer's responsibility. It is a subjective obligation – that places the Assessor and Taxpayer in adversity to one another unnecessarily if one claims the other party did or did not provide Assessor materials. Assessor source documents, if the SBOE seeks them, should be provided by the Assessor that creates them. The Assessing office that provides the SBOE other electronic format materials would be able to provide electronic attachments to the SBOE.

A.4.b. – update timing to 5 business days for fairness and conformity to 'or as mailed within 5 business days'

A.4.c. and A.5 – Electronic Filing is not clearly set out. - Remains not addressed

A.6. – “The SBOE *is to* admit new evidence...” not ‘may’.

- The SBOE *is to* admit new or additional evidence only if:

6.a and/or 6.b – not both required to allow evidence. This looks like a syntax matter.

D. Remains not addressed – CONFIDENTIALITY ISSUE –

SBOE respect for 'Confidentiality' designation and/or Arizona statutory confidentiality is ignored and not clear.

The new section continues to not treat the parties equally.

There is no mention of Taxpayer/Petitioner information as confidential nor remaining confidential if it was provided and/or submitted as confidential by the Taxpayer/Petitioner.

I.E. DOR Income Form 82300 or similar proforma submittals under ARS

4. R16-4-105 Motions Remains not addressed

See, for example, C.2. – the SBOE board may rule before a hearing is done where evidence would be provided? This is not 'due process'.

Note delivery vs/ serve or service is confusing. If delivery – this is in person or by mail. If service = service of process via summons or service by a process server the timelines do not work.

→ Idea - Perhaps this section should include a mechanism of oral argument request vs. 'on the record motions?'

5. R16-4-106 Hearing. Remains not addressed

C. SBOE discretion to allow telephonic hearings?

If the taxpayer/respondent or assessor requests this, why not?

What about zoom or other electronic formats not addressed?

6. R16-4-108 Hearing Procedures Remains not addressed

- ➔ The new proposed rule now grants discretion to the SBOE to allow or not allow the parties to be heard.
- ➔ The SBOE appears to only allow initial remarks and presentation by the taxpayer/petitioner *if an opening statement is allowed at the discretion of the SBOE.*

This is a new limit to Taxpayers' ability to provide basis for its appeal and does not follow current procedure.

7. R16-4-109 Rules of Evidence

- C. What does 'cumulative' mean?
- F. What does 'authenticity' mean?

8. R16-4-111 Subpoenas

- Are submission for a Subpoena to be made to the SBOE?
- If the SBOE the sole party that may crate and make/issue a Subpoena?
- It appears the Chairman's signature is required to authenticate the Subpoena. What if Chainman and does not grant its signature? The language is discretionary.
- Define 'service' – is this service of process via summons, mailed certified / return receipt request or in person delivery?

9. R16-4-112 Records of a Hearing

-Should adjust to also state and identify ARS 39-121, 39-121.01, 39-121.02.

10. R16-4-115 SBOE Decision

- A. – Decision is to be mailed within a specific number of days after the hearing – perhaps 10?
- IMPORTANT - Specific deadline is needed to allow Taxpayer /Petitioner the ability to file to tax court. See requirement of ARS 42-16203 – ARS states filing to tax court within 60 days of receipt of the SBOE mailed decision.

11. R16-4-116 Review of SBOE Decisions Remains not addressed

This new draft rule appears to expand that scope of the 'Chairman's' discretion significantly. The below new proposed rule wording examples (are some but not all) of scope increase appear to be well beyond simply to 'ensure due process to all parties'. Please review this section carefully.

For instance:

- C.1. states 'irregularity, abuse of discretion...'
- C.3. states 'accident or surprise that could have been prevented by ordinary prudence.'

C.5. 'Errors'- various types of possible errors are addressed here. This does not appear to be a 'due process' element from current draft context.

C.7. – 'findings of fact and/or decision is not supported by the evidence or is contrary to law.

The proposed language is discretionary and subjective language, not fact issue based.

- A. Consider - Adjust to 10 business days
- 'Not later than 10 days after a hearing ...' should this be not later than 10 days after receipt of the SBOE hard copy decision? To make sure the hearing decision is memorialized accurate in the hard copy SBOE decision card provided as required by ARS?

Also, below are few general regulatory burden increase, inequality and confusing matters for your review and adjustment:

Regulatory & Practical Concern/Criticism- in addition to Exhibit A – see below:

1. Taxpayer Burden - Significant new taxpayer/petitioner submittal requirements
2. Confidentiality - Lacks statutory conformance, stability and permanence for taxpayer to submit confidential materials submittals.
3. Draft procedures do not represent hearing practices in place.
4. Unequal treatment and requirements between the parties.

The new draft rules place new, additional and onerous regulatory burdens on, and added cost to, the Taxpayers to prepare and file a petition. It would require that Taxpayers make an additional submission to the SBOE of Assessor materials in advance upon filing and/or various days in advance of a scheduled hearing. *Respectfully, if the SBOE thinks there is some good cause for this, ask the Assessor for its materials to support the valuation as of the date of value per ARS.*

5. Income Method Specificity & Confidentiality - Based on our previous correspondence via email and in person, you informed me the rule to require new and updated (if applicable) submittal of Income Form 82300 *evidence is to only be applicable and relate to new income materials.* Thank you for addressing this matter.

Please remember that we were told various times this new submittal requirement is only to apply to 'new income' materials to avoid confusion.

Summary:

Thank you for the ongoing considerations of public concerns. In good faith we ask that you take the above concerns and criticism of the *September / October proposed revised 2021 draft Rules* into account in the final draft. We ask that you favor adjustments to ensure a balanced approach that does not further burden the Taxpayer with unnecessary expense and regulatory hurdles.

Fairness and equity between the Taxpayer Petitioner and Assessor Respondent is the guidepost. The balance between the parties is to be equitable; and Assessor Respondent materials and information readily accessible to the Taxpayer and SBOE by the Assessing offices.

Please contact me with questions or comments. Rules are important and should be clear, equitable and understandable. We appreciate the SBOE's work on the rules to date. We are available to work through the above and other wording concerns/criticisms if you are interested.

Thank you for your time and attention.

Respectfully Submitted:

Very Truly Yours,

/s/ Jodi A. Bain

Jodi A. Bain, M.A., J.D., LL.M.

//

///

///

Exhibit A

Letter of Concern August 2020

On Following Pages



August 30, 2020

Via Mail: certified/return receipt request
Via Email: gshook@sboe.state.az.us

Mr. George Shook
Acting Chairman Arizona State Board of Equalization
100 North 15th Avenue, Suite 130
Phoenix, AZ 85007

Re: Concerns and Constructive Criticism, for Working Draft New Agency Rules Summer 2020

Dear Mr. Shook,

This letter is provided to you regarding real concerns and criticisms relating to the State Board of Equalization (“SBOE”) draft working rules with Notice of Rulemaking Docket Opening XX A.A.R. XXX August XX, 2020.

It is our understanding that the working draft provided to me is a working draft in progress. That is, it will be sent out to stake holders, etc. in the coming months for review, comment and suggestions. I would have appeared and offered comment personally or via zoom (or zoom like mechanism) but we are unaware of rule work sessions or meetings for participation at this stage. The comments and suggestions below are made with an eye towards transparency, equality between the parties, current process management and clear parameters for both parties to comprehend and follow.

For purposes of this letter, “Taxpayer” is also known as the “Petitioner” and is the party filing the petition for review. Further, the “Respondent” means the Assessor office, other governmental entity or other government representative qualified to respond to and/or answer an appeal petition by Taxpayer &/or its representative.

Please note in May 2018 we also reviewed and provided a letter to your Agency regarding the then draft rules version. Much of the same concerns continue and have not been addressed. Some examples are addressed below.

Below are some, (but not a complete list of), concerns/criticisms we ask the SBOE to address and remedy as it works to finalize its working draft of the rules. Please keep us notified on any public meetings, stake holder meeting and/or otherwise as the process moves forward.

In summary, the current 2020 draft rules:

- (i) Impose new and unnecessary regulatory burdens on the Taxpayer/Petitioner;
- (ii) Increase Taxpayer costs;

- (iii) Fail to require *quid pro quo* between the Respondent Assessor and the Taxpayer Petition;
- (iv) Increase required responsibilities and burden of submissions and proof of the Taxpayer Petitioner for the appeal process (filing, timing, hearing, etc.);
- (v) Respondent (Assessor) necessary and required disclosures are not addressed;
- (vi) Do not reflect various current administrative filing, appeal process and hearing protocols with clarity;
- (vii) Imbue a blanket, discretionary review of any and all decisions of SBOE hearings to the 'chairman of the SBOE' which is not defined and other undefined terms.

For instance, is this the 'chairman of the SBOE' that certain chairman from the hearing on the day it was heard? Or, rather the Director of the SBOE as an appointed position? And, the scope is overly broad without defined terms of 'irregularity', 'accident or surprise' and/or 'error of law'. Or, who is the decision maker of an 'error of law'?).

- (viii) Do not impartially allocate requirements among the parties – treats different parties differently; and
- (ix) Are unclear how and when petitions, attachments and pre-hearing submittals and/or new requirements for materials are to be hard mailed, electronically mailed, uploaded via SBOE website link and/or otherwise allowed to be provided to the SBOE.

The draft rules increase Taxpayer obligations while remaining silent or reduce the Respondent Assessor's reciprocal obligations – I.E. - to disclose materials prior to hearings, participate in SBOE Hearings in a meaningful way, etc. This creates an imbalance of power and increases Taxpayer expense to enter and use the administrative hearing process.

A few concrete examples of the above are given below. We ask that the draft Rules be improved to not burden the Taxpayer further and be made clearer regarding the submittal process and particulars.

1. R16-4-101 Definitions

The Definition section appears to be missing the following, included but not limited to, words based on reading the working draft:

- ADOR – Arizona Department of Revenue?
- Affirmation – what is Affirmation?
- Authorized Assessor/Respondent Representative – County assessor appraiser?

- Board – which board? Is this SBOE as a whole? As a sitting panel or 1 SBOE Board member sitting?
- Board Member – which board? SBOE or otherwise?
- Chairman – of what? A hearing? Of the SBOE as a whole?
- Director - of SBOE as a whole as an appointed position?

Confusing definitions and/or wording:

Note, 'Motion' is defined by stating 'aside from parliamentary procedures' – what does this mean or reference? Robert's Rules apply to the hearings now? To the SBOE as whole?

'Review' is defined as 'quasi-judicial consideration' in the draft; What is this referring to?

'SBOE' is also defined in multiple ways: State Board of Equalization as a 'whole entity'?. Then as a member of the SBOE, and as a panel of members of the SBOE, etc. The SBOE is the State Board of Equalization as a whole. A member of the SBOE is a SBOE Board Member (for instance, etc.).

2. R16-4-102 Jurisdiction of the SBOE

- Draft language for B:
 - o B.1 – 'property assessment changes' – what does this new wording mean?
 - o B.6. – why was 'or an error in the tax rate' removed since the last draft in 2018'?
 - o Perhaps the following is a missing items to add?- Improvements on Possessory Rights (IPRs)

3. R16-4-104 Filing a Petition; Filing deadlines

This section appears to be missing reference to bulk filings, electronic filings and other electronically available mechanisms the SBOE uses.

A.3.b. –

'Under all other provisions' referencing hard mail only as a requirement is confusing if the SBOE allows electronic filings or via email.

A.4.c. and A.5 –

'evidence originally' filed to the assessor is unclear. If there is an electronic filing completed for an appeal to the SBOE, it now also asks for hard copies of the electronic filing? And then the Taxpayer/Petitioner is to provide another submission in triplicate of a written briefing and the respondent government is not so required? This is not the current process and appears unbalanced between the parties and a new requirement.

A.6. New procedure in this draft –

Written brief, presentation, etc. in advance for Taxpayer/Petitioner only



As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally prepare and submit a written briefing or submission presentation for the hearing. *This is not current practice.* It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.

A.6.a, b, and c. – Evidence

New procedure in this draft - As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally submit hard copy submittals of any evidence for the property in the petition. *This is not current practice.* It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.

In conversation, the SBOE personnel indicated only updated income method filings would be required to be submitted in advance of a hearing. The new rules draft wording is NOT limited to an update income filing.

A.7. – New SBOE limitation on evidence (new or additional).

This concept would be a new procedure and appears to actually limit the taxpayer/petitioner hearing information allowed to be used and 'at the discretion' of the board /hearing members.

D. SBOE respect for 'Confidentiality' designation.

The new section does not treat the parties equally. There is no mention of Taxpayer/Petitioner submittal information being or remaining confidential if it was provided and/or submittal as confidential (or noted as confidential) by the Taxpayer/Petitioner

4. R16-4-105 Motions

See, for example, C.2. – the SBOE board may rule before a hearing is done where evidence would be provided? This is not 'due process'. Idea - Perhaps this section should include a mechanism of oral argument request vs. 'on the record motions'?

5. R16-4-106 Hearing.

B. 'Board' – this needs to be defined.

C. SBOE discretion to allow telephonic hearings? If the taxpayer/respondent or assessor requests this, why not? What about zoom or other electronic formats not addressed?

6. R16-4-107 'On-the-Record' Hearing; Failure to Appear

- A. What does 'for the convenience of the board' mean here?
- D. Unable to follow - should this read 'in subsection (B)'?

7. R16-4-108 Hearing Procedures

B.1. 'board members' - Is this reference to the SBOE panel member or member presiding over the hearing?

B.3. Currently, at each hearing the person or panel of the SBOE members hearing the petition do the following: (1) asks if the Assessor rep has a recommendation to the SBOE; (2) asks if there is a recommendation by the assessor - if the taxpayer/ petitioner accepts it or would like to comment and/or continue to opening remarks; (3) if no assessor recommendation to the SBOE – the taxpayer/ petitioner is asked to make their initial remarks and presentation of information/evidence and notifies the taxpayer/petitioner they will have an opportunity for rebuttal after the respondent responds to the taxpayer/petitioner initial remarks and presentation.

This new rule appears to only allow initial remarks and presentation by the taxpayer/petitioner if an opening statement is allowed at the discretion of the SBOE. This does not follow current procedure.

C. This new paragraph is confusing. It appears to allow the SBOE presiding person or persons to require additional evidence. What is its purpose?

E. 'As required by law...' What is this referring to? This is an unclear new parameter.

8. R16-4-109 Rules of Evidence

- C. Draft language for C- IMPORTANT – reference to 'R16-4-104(A)(6)' this is a reference to allowable Evidence. See above concerns, thoughts and ideas for clarification regarding R16-4-104.
- D. Draft language for D- 'At the Board's discretion' – what does this mean? What are the parameters? What is this supposed to do?

9. R16-4-110 Proof

Burden of proof for what? To show the property is overvalued? Incorrect? Not concurrent with similar properties similarly situated per law or something else?

10. R16-4-116 Review of SBOE Decisions

- A. 'the chairman'. For what? ARS 42-16161(A) states
"The chairman of the state board may review any decision to ensure due process to all parties." But this new draft rule appears to expand that scope significantly.

For instance:

Draft A.2. states 'irregularity, abuse of discretion or misconduct by a party'

Draft A.3. states 'accident or surprise that could have been prevented by ordinary prudence.'

Draft A.5. 'Errors' - various types of possible errors are addressed here. This does not appear to be a 'due process' element from current draft context.

The two above examples (are some but not all) of scope increase appear to be well beyond simply to 'ensure due process to all parties'. Please review this section carefully.

Also, below are few general regulatory burden increase, inequality and confusing matters for your review and adjustment:

Regulatory & Practical Concern/Criticism:

1. Use of ambiguous and confusing language.
2. Lack of definitions in some instances.
3. Draft procedures do not represent hearing practices in place.
4. Significant new taxpayer/petitioner submittal requirements.
5. What is the respondent Assessor's obligation for filing, evidence, briefing, exchange of materials?
6. Unequal requirements between the parties.
7. R16-4-104 Filing a Petition –
 - a. This new draft rule significantly deviates from the actual filing and then hearing process and protocols.
 - b. A new requirement of pre-submission of materials includes Taxpayers' written materials to the SBOE in advance of the hearing **but not the Assessor Respondents. This is an unequal burden application.**

For years, the process has been that the Taxpayer brings its material to the hearing and provides it to the SBOE in 'real time' at the hearing.

The new draft rules place new, additional and onerous regulatory burdens on, and added cost to, the Taxpayers to prepare and file a petition. It would require that Taxpayers make an additional submission to the SBOE of essentially a 'position paper' in advance upon filing and/or various days in advance of a scheduled hearing. *Respectfully, if the SBOE thinks there is some good cause for this, why is the same burden not imposed on the Assessor?*



In addition, the draft SBOE Rules adjust notice of hearing schedule giving the Taxpayer/Petitioner fourteen (14) days notice of a SBOE hearing. This results in that the Taxpayer/Petitioner then immediately would be required to create and submit a 'position paper' and submit one, three or more copies via hard mail. The process is confusing in its wording. This is a significant deviation from current procedure and unnecessary cost to the Taxpayer.

8. Income Method Specificity - Based on our previous correspondence via email and in person, you informed me the rule to require submittal of evidence *is to only be applicable and relate to new income materials*. That is not what the draft rules indicate.

Please remember that we were told various times this new submittal requirement is only to apply to 'new income' materials to avoid confusion.

While this new language burdens the Taxpayer Petitioner the draft rules fail to place the same burden on the Assessor. - Why is the Assessor Respondent not equally burdened and required to provide the above to the Taxpayer?

Summary:

Once more, we ask in good faith that you take the above concerns and criticism of the *summer August 2020 draft Rules* into account in the redrafts. A balanced approach that does not further burden the Taxpayer with unnecessary expense and regulatory hurdles is preferred.

Fairness and equity between the Taxpayer Petitioner and Assessor Respondent should be the guidepost. The balance between the parties should be equitable; and Assessor Respondent materials and information readily accessible to the Taxpayer.

Please contact me with questions or comments. Rules are important and should be clear, equitable and understandable. We appreciate the SBOE's work on the draft to date and are available to work through the above and other wording concerns/criticisms if you are interested.

Thank you for your time and attention.

Respectfully Submitted:

Very Truly Yours,

Jodi A. Bain

Jodi A. Bain, M.A., J.D., LL.M.



Christa Rush <crush@sboe.az.gov>

Fwd: comments and concerns on Proposed SBOE Rules Due October 18, 2021

1 message

George Shook <gshook@sboe.az.gov>
To: Christa Rush <crush@sboe.az.gov>

Mon, Oct 18, 2021 at 11:07 AM

----- Forwarded message -----

From: **Tom Naifeh** <tom@sagetaxappeals.com>
Date: Sun, Oct 17, 2021 at 2:21 PM
Subject: comments and concerns on Proposed SBOE Rules Due October 18, 2021
To: gshook@sboe.az.gov <gshook@sboe.az.gov>, crush@sboe.az <crush@sboe.az>

Please see attached document regarding the Proposed SBOE Rulemaking

Sincerely,

Thomas Naifeh
(520) 991-5869

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George R. Shook
Acting Chairman Arizona State Board of Equalization
Direct: 602-364-1611 Main: 602-364-1600



SBOE Rulemaking comments and concerns for October 2021.docx
14K

October 17, 2021

Mr. George Shook, Acting Chairman
State Board of Equalization
100 N. 15th Avenue, # 130
Phoenix, AZ 85007

Re: Comments and concerns on the Notice of Proposed Supplemental Rulemaking, Title 16. Tax Appeals, Chapter 4. State Board of Equalization

Response due by: Monday, October 18, 2021 per section 11 of the document

Mr. George Shook:

I have read the proposed Rulemaking for the SBOE that were posted. I have the following concerns:

R16-4-104(A)(4)(a)(ii) with R16-4-104(A)(4)(c) creates an unfair, impractical, and onerous situation to property owners and their representatives. The "Failure to comply with these requirements (that exceed statutory requirements as stated in ARS 42-16157(A)) shall result in an administrative dismissal of the appeal." The rulemaking requirement under the first portion shown above (R16-4-104(A)(4)(a)(ii) requires a property owner to now submit "any attachments by the assessor". This may be interpreted to require the petitioner to submit any assessing office workups 'as part of the petitioner's submittal'. The respondent assessor or assessing office is not required to submit the petitioner's workups. This becomes a burden to petitioners. The assessing office, if they wish to, has the right to submit and attend hearings. They, the assessing office, should bear this burden, not taxpayers or their representatives. Your rulemaking is attempting to further shift work, cost, and additional burdens onto the property owner or their representative. Furthermore, you placed a burden of uploading or mailing within 3 business days of electronic filing onto the petitioner. Previous rulemaking drafts had a 5 day window. As we know from the recent Covid-19 issues, governmental offices were closed to the public and limits petitioner options for delivery. Many petitioners would not recognize this new burden and would allow statutorily accurate petitions to now be dismissed. The only option then is to file a court case and the costs, both for additional work, time, copies, and potential court fees and costs is onerous.

R16-4-104(A)(6) Will be confusing to the public; and training sessions of SBOE members the Arizona State Attorney Generals representatives (employees) stated 'The SBOE should generously allow any evidence into the cases that the SBOE hears'. The idea is for an informal, ease of process. This rule makes it the opposite. It allows unfair, inequitable, and unbalanced options from varying SBOE members and interpretations.

Sincerely,

Thomas Naifeh

10/18/2021 – Oral Proceeding Comments Provided in the Google Meet Chat by attendees

00:51:49.203,00:51:52.203

Neil Konigsberg: COMMENT: rule R16-4-104(A)(4)(b) - why 3 business days? That's a short time frame which requires overnight mail

01:08:27.097,01:08:30.097

Mary Chandler: Comment: Rule R16-4-104 (A)(4)(b) -- The rule allowing 3 business days to perfect an electronic appeal actually expands the statutory deadline for filing an appeal. The electronic appeal without all the required components is not an appeal. Now that uploading of all requirements to perfect an appeal will be available, perhaps we should not allow bifurcated filing of an appeal.

01:23:27.897,01:23:30.897

Mary Chandler: Comment: R16-4-104 (A) (4)i) Since attachments to the Assessor's decision are part of the Assessor's decision, and the statute requires a copy of the decision, the attachments need to be included. This rule does not require the petitioner to attach a copy of the Assessor's evidence at the Assessor's level.

02:57:59.003,02:58:02.003

Mary Chandler: Comment R16-4-115 The appeal limit per statute is 60 days from the date of MAILING not RECEIPT as commented by Ms. Bain.



Webmaster - SBOE <webmaster@sboe.az.gov>

Fwd: Rules Comment

1 message

Mary Chandler <mzchandler3@gmail.com>
To: Webmaster - SBOE <webmaster@sboe.az.gov>

Mon, Oct 18, 2021 at 8:35 AM

----- Forwarded message -----

From: **Mary Chandler** <mzchandler3@gmail.com>

Date: Mon, Oct 18, 2021 at 8:33 AM

Subject: Rules Comment

To: George Shook <gshook@sboe.az.gov>, Christa Rush <crush@sboe.az.gov>, Brad Tebow <brad@tebow.com>

Rule No. R-16-4-104 A (5) (c) (i) and (ii).

This rule creates an inequity between the parties. In the centrally assessed appeals the Department is required to provide five copies of its evidence to the Board for the five panel members while the Petitioner is only required to file four copies. The Board thus appears to be favoring the Petitioner. If the Board then makes a copy of the Petitioner's evidence, the Board is doing the Petitioner's job for it. Also note: the Petitioner's documents may be of such a nature that the Board's copy machine may not be able to make an exact copy for the Board's use.

Mary Chandler

Re: Comments and Concerns on the Notice of Proposed Supplemental Rulemaking

message

From: Mary Chandler <mzchandler3@gmail.com>
To: Brad Tebow <brad@tebow.com>
Cc: George Shook <gshook@sboe.az.gov>

Tue, Oct 19, 2021 at 1:53 PM

Thank you.

On Tue, Oct 19, 2021 at 8:56 AM Brad Tebow <brad@tebow.com> wrote:

Thanks, Mary. You covered all my questions, including why you are keyboarding throughout the night. I hope this email finds you peacefully recovering all the sleep you gave up in service to the Board.

Brad Tebow

From: Mary Chandler [mailto:mzchandler3@gmail.com]
Sent: Tuesday, October 19, 2021 3:48 AM
To: Brad Tebow
Cc: George Shook
Subject: Re: Comments and Concerns on the Notice of Proposed Supplemental Rulemaking

Some additional thoughts on Mr. Naifeh's comments. The rule in question pertains only to electronic filings. Because of current technological limitations, the entirety of the required petition cannot be uploaded. Hence the grant of additional time to file a complete petition. This is a benefit, not a burden. If and when technology improves to such an extent that the entire petition may be uploaded, the necessity for this rule will go away.

As to the three business day requirement, this version clarifies how to account for non-business days, which is a benefit to all concerned, including the taxpayer.

Mary Chandler

On Tue, Oct 19, 2021 at 12:30 AM Mary Chandler <mzchandler3@gmail.com> wrote:

I have looked at Mr. Naifeh's comments. I don't understand why he believes the rule is onerous.

The statute requires use of the petition form approved by the department. That form makes it clear that attachments to the Assessor's decision are part of the Assessor's decision. It does NOT require attachment of the Assessor workup. Hence there is no additional burden.

As per my previous comments, the permission to extend the time for filing the appeal attachments by three business days for electronic filings, actually extends the time for perfecting the appeal. Mr. Naifeh's comment that we have changed that extension to three days from five days in the previous draft makes little sense. The five day requirement vs. the three business day requirement in most cases will actually be the same because of the two (or sometimes three) day weekend. This version of the proposed rule merely makes it clear as to how to account for non-business days and eliminates any uncertainty for the taxpayer as to the exact date requirement. That is a benefit to the taxpayer.

covered by R16-4-109. Rules of Evidence. The appeal form states the basis of appeal as cost, income, market or other. "Other" is an expansive term, which cannot be described by cost, income or market. Thus, the term "issues" in the proposed rule is appropriate.

Mary Chandler

On Mon, Oct 18, 2021 at 9:28 PM Brad Tebow <brad@tebow.com> wrote:

First Point:

It appears that Mr. Naifeh hopes to avoid rejections of appeals for failure to comply with the instructions on the appeal form. The SBOE requirement for the petitioner to include the assessor's decision in its entirety appears to be his concern. ARS 42-16051 provides that the petitioner will use a department-created form. That form holds the directions on what to include. For the SBOE to review an assessor decision, the SBOE needs a complete record of that decision.

Second Point:

Some unhappiness regarding the requirement that the required material that is part of a petition be mailed within 3 days of the electronic filing, rather than the previous 5 days. I'm not sure if he believes 5 days is okay, but 3 days is not.

Third Point:

R16-4-104(A)(6) has been the SBOE's practice since I started in 2006. It may be different in Pima County. Also, assessor's may not object to evidence offered to support non-petitioned issues. ARS 42-16051 uses the terms "method or methods of valuation" as opposed to "issues." The DOR appeal form uses "Basis for Petition." Perhaps, we can replace the term "issues" with "method or methods of valuation", "other" or "Basis for Petition." I think Mr. Naifeh has a point on the use of a new term that doesn't match the statute or the DOR forms.

Brad Tebow

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From: George Shook [mailto:gshook@sboe.az.gov]

Sent: Monday, October 18, 2021 4:32 PM

To: Brad Tebow; mzchandler3

Subject: Fwd: Comments and Concerns on the Notice of Proposed Supplemental Rulemaking

Tom Naifeh's new comments.

What is Mr. Naifeh asking for with both these comments?

Thank you,

George Shook 602-364-1611

----- Forwarded message -----

From: **Naifeh** <naifeh@sagetaxappeals.com>

Date: Mon, Oct 18, 2021 at 12:57 PM

Subject: Comments and Concerns on the Notice of Proposed Supplemental Rulemaking

To: George Shook <gshook@sboe.az.gov>

Cc: tnaifeh@outlook.com <tnaifeh@outlook.com>

Tom Naifeh asked that I send you a revised copy of the letter previously sent to you. A hard-copy of this letter is being mailed today.

Thank you,

Judith Schultz, on behalf of

Michael J. Naifeh

Sage Tax Appeals

6061 E Grant Rd

Tucson AZ 85712

Direct 520.300.6561

Main 520.300.6866

judy@sagetaxappeals.com

naifeh@sagetaxappeals.com

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George R. Shook

Acting Chairman Arizona State Board of Equalization

Direct: 602.364.1611 Main: 602.364.1600

SBOE RULES NFR PUBLIC COMMENTS COLLATED

	COMMENTER	RULE	COMMENT	AGENCY RESPONSE
1	Jeffrey Nolan	N/A	Are our previous comments still part of the record or do we have to do through them again?	Comments previously made during the drafting of the rules were received by the SBOE and addressed in the current proposed rules and the final rulemaking. Stakeholder comments and public comments are hereby addressed.
2	Jeffrey Nolan	N/A	Request that all decisions be made available to the general public on the website.	The current practice is decisions are made available to the public in compliance with state laws. Persons desiring copies of decisions may request information via the FOIA. A Public Request form has been posted to the internet.
3	Jeffrey Nolan	R16-4-103(7)	R16-4-103(7): Is there an exchange of information for all parties before the hearing similar to what you are doing with COVID-19. We would like to see in the rule a mutual exchange of all parties either at the Assessor level or prior to the hearing.	Incorrect citing of rule. Should be citing R16-4-104(6)(c). This rule pertains to statutorily valued property by the Department of Revenue. Any request mandating early disclosure in all cases should be addressed to the legislature. Currently, state law has distinguished between complex cases involving the ADOR and locally-assessed cases.
4	Jeffrey Nolan	R16-4-107(D):	R16-4-107(D): If for whatever reason someone submits evidence but they fail to appear, the Board should treat it as an On-the-Record hearing and they shall review any evidence that has been submitted. R16-4-107(A): The SBOE shall conduct a hearing entirely On-the-Record, for the convenience of the board, and only if all parties to the hearing agree. Is this only for the purposes of COVID-19? Or, is it intended to be the method of delivery post COVID-19 as well? What does 'for the convenience of the board' mean here? D. Unable to follow - should this read 'in subsection (B)'?	The SBOE does not have the authority to deny the party that does appear the opportunity to present its evidence and testimony at the hearing. This would be a denial of that party's due process. R16-4-107(A) was revised to provide on-the-record hearings only at the request of a party and if all parties agree. This comports with current procedure and it is not a COVID-19 specific, emergency procedure. In an on-the-record hearing, evidence must be summarized in the record by the SBOE in sufficient detail to identify the evidence considered and its relevance to the appeal. The recording must provide a record of the evidence considered, the decision, and the reasoning that the SBOE used to arrive at the decision.
5	Jeffrey Nolan	R16-4-102(E)	What does it mean when the Board rejects jurisdiction and dismisses an appeal for lacking jurisdiction? Is that a decision that the time clock is in place to go forward?	That is not in the Board Rules. Are you asking to have that included in our Rules? The Board will issue a decision for all appeals properly filed to the Board. The staff does not have the authority to reject an appeal but if the appeal is not perfected then staff will contact the petitioner to assist with getting the appeal perfected. See A.R.S. §§ 42-16051, 42-16157 and 42-16158. We are unable to answer the second question since that would be rendering legal advice.
6	Jeffrey Nolan	R16-4-104(A)(5)	R16-4-104(A)(5): On electronic filing, can you upload all documents that need to be filed with the appeal?	A.R.S. § 42-16161 allows the Board to create an electronic means for filing an appeal. The current application does not allow document upload. At present a new appeals application is under development and will accommodate uploading of documents but only when filing an appeal. Otherwise, documents have to be sent to the SBOE as stated in the rules at R16-4-104(A)(6).

7	Jeffrey Nolan	R16-4-106(C)	R16-04-106(C) I think it should be if any party wants to call in telephonically for whatever reason the SBOE should allow any party to do so. I'm not sure that should be in the rules but the way that I read it it's at the Boards discretion.	Current practice is for all hearings to be in person. In-person hearings are more effective and efficient than telephonic hearings. The SBOE will accommodate all request in compliance with the Americans Disabilities Act, ADA. Due to the COVID-19 pandemic, hearings have been conducted virtually and by telephone. (See On-the Record hearings)
8	Jeffrey Nolan	N/A	By statute its valuation and classification that the Board has jurisdiction on but I have a question specifically related to exemptions. Of whether or not the Board takes jurisdiction on exemptions that maybe they are denied or there is a dispute of how much of the property should be exempt? NOLAN	The SBOE has jurisdiction to determine if a property's use or occupancy qualifies for a tax exemption under the error-correction statutes. See A.R.S. § 42-16251(3)(b); Lyons v State Board of Equalization, 209 Ariz. 497, 104 P.3d 867 (Ariz. App. 2005)(concludes that the SBOE has jurisdiction to determine if an assessor made an error in determining whether an exemption applies). The SBOE does not have jurisdiction over exemptions at valuation hearings because these hearings are conducted in the year before tax exemptions are determined by an assessor.
9	Jeffrey Nolan	N/A	In general, any of the rules and the definitions that are already covered by statute are redundant and to make sure that they avoid inadvertently exceeding statutory authority. I don't have any specific items. NOLAN	The SBOE does not present any rule that exceeds its statutory authority.
10	Jolene Christopherson	R16-4-107(A)	R16-4-107(A): The SBOE shall conduct a hearing entirely On-the-Record, for the convenience of the board, and only if all parties to the hearing agree. Is this only for the purposes of COVID-19? Or, is it intended to be the method of delivery post COVID-19 as well?	On-the-Record hearings are not conducive for all appeals. Since work year 2000, OTR hearings provide the SBOE the ability to facilitate unique time constraints for petitioners and ADA compliance. It also accommodates hearings that are mechanical in nature for correcting assessor records. For these reasons the OTR hearings will continue.
11	Paul Euler	R16-4-107(A)	My comments would be, in general, to include the use of email and telephone as acceptable methods in SBOE communications and hearings statewide.	An official record must be kept regarding SBOE communication and all hearings. All forms of communication are employed by the SBOE to accomplish its mission. (See comment #7)
12	Dan Swango	R16-4-101	R16-4-101: "Definitions" For terminology clarity, I suggest that consideration be given to adding the word "Chairman" to the list of definitions. This would make clear that Chairman refers to the governor appointed head of SBOE and not to the chairman of a panel of hearing officers in a hearing. Suggested wording: "Chairman" means the Chairman of the State Board of Equalization as defined and described in A.R.S. § 42-16154. (In these Rules the word "chairman" does not refer to the chairman of a panel of hearing officers conducting a hearing.) Imbue a blanket, discretionary review of any and all decisions of SBOE hearings to the 'chairman of the SBOE' which is not defined and other undefined terms	The proposed rule R16-4-116(A) has been removed. Rule R16-4-101, Definitions, has been changed to identify role of the "Chairman" of a SBOE hearing panel and the chairman of the Arizona State Board of Equalization (A.R.S. § 42-16154) as "SBOE Chairman".

13	Jodi Bain	N/A	(i) Impose new and unnecessary regulatory burdens on the Taxpayer/Petitioner;	The SBOE website link as referenced in the comment was made available only during the pandemic as a temporary avenue for petitioners to provide documentation to the SBOE in preparation for virtual hearings. This was a short-term process or solution. The SBOE will eventually return to in-person hearings where documentation submission requirements will be supported as outlined in R16-4-104 (3).
14	Jodi Bain	N/A	(ii) Increase Taxpayer costs;	The SBOE does not present any rule that exceeds its statutory authority. The board has reviewed this comment and did not discover any rule that would unduly increase the cost to the petitioner's objective to file the petition and participate in a hearing.
15	Jodi Bain	N/A	(iii) Fail to require quid pro quo between the Respondent Assessor and the Taxpayer Petitioner;	During in-person hearings and On-the-Record hearings there is no requirement of either party "to disclose materials prior to hearings" as outlined in R16-4-104(A)(6).
16	Jodi Bain	N/A	(iv) Increase required responsibilities and burden of submissions and proof of the Taxpayer Petitioner for the appeal process (filing, timing, hearing, etc.);	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. General comments without reference to numbered rules are vague and limit the agencies ability to address specific concerns. In an effort to address this comment R16-104(A)(6) changed "the petitioner" to "either party" in reference to evidence submission and timeline; R16-4-110 changed to clarify burden of proof as referenced in Arizona Revised Statutes.
17	Jodi Bain	N/A	(v) Respondent (Assessor) necessary and required disclosures are not addressed;	R16-4-104(A)(6) was changed to apply to petitioner and respondent. During in-person hearings, as well as On-the-Record hearings, there is no requirement on either party to disclose materials prior to hearings. R16-4-110 was changed to clarify burden of proof.
18	Jodi Bain	N/A	(vi) Do not reflect various current administrative filing, appeal process and hearing protocols with clarity;	Previously addressed above, see comment number 12 (ix). The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq.
19	Jodi Bain	R16-4-101	(vii) Imbue a blanket, discretionary review of any and all decisions of SBOE hearings to the 'chairman of the SBOE' which is not defined and other undefined terms.	R16-4-116 was removed as being unnecessarily complicated and repetitious of A.R.S. § 42-16164(A) and due to public comment.).
20	Jodi Bain	N/A	(viii) Do not impartially allocate requirements among the parties – treats different parties differently; and	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. General comments without reference to numbered rules are vague and limit the agencies ability to address specific concerns. In an effort to address this comment R16-104(A)(6) changed "the petitioner" to "either party" in reference to evidence submission and timeline; R16-4-110 changed to clarify burden of proof as referenced in Arizona Revised Statutes.
21	Jodi Bain	N/A	(ix) Are unclear how and when petitions, attachments and pre-hearing submittals and/or new requirements for materials are to be hard mailed, electronically mailed, uploaded via SBOE website link and/or otherwise allowed to be provided to the SBOE.	R16-4-104 outlines current administration for the submittal of petitions and evidence reflects the change in the processes due to the COVID-19 pandemic. The SBOE conducts virtual hearings and must ensure participants to the hearings possess the same documents prior to the commencement of a hearing. The logistics are dynamic and are different for in-person hearings. See preamble item 10 for changes to the proposed and final rules. These changes reflect the differences from the draft rules.

22	Jodi Bain	N/A	(x) The draft rules increase Taxpayer obligations while remaining silent or reduce the Respondent Assessor's reciprocal obligations – I.E. - to disclose materials prior to hearings, participate in SBOE Hearings in a meaningful way, etc. This creates an imbalance of power and increases Taxpayer expense to enter and use the administrative hearing process.	See preamble item 10 for changes to the proposed and final rules. Petitioner and respondents are held to the same requirements of Arizona Revised Statutes.
23	Jodi Bain	N/A	We ask that the draft Rules be improved to not burden the Taxpayer further and be made clearer regarding the submittal process and particulars.	See preamble item 10 for changes to the proposed and final rules. These changes reflect the differences from the draft rules.
24	Jodi Bain	R16-4-101	The Definition section appears to be missing the following, included but not limited to, words based on reading the working draft: ADOR – Arizona Department of Revenue?	R16-4-101. Changed to include Department of Revenue.
25	Jodi Bain	R16-4-101	Affirmation – what is Affirmation?	R16-4-108, R16-4-109: The practice of the SBOE is to have participating petitioner, respondent and witnesses swear or affirm to their testimony is the truth.
26	Jodi Bain	R16-4-101	Authorized Assessor/Respondent Representative – County assessor appraiser?	Various rules cite participants to the hearing. Current practice of the SBOE is to vet the authenticity of the participants who will provide evidence and testimony.
27	Jodi Bain	R16-4-102	Board – which board? Is this SBOE as a whole? As a sitting panel or 1 SBOE Bord member sitting?	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
28	Jodi Bain	R16-4-103	Board Member – which board? SBOE or otherwise?	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
29	Jodi Bain	R16-4-104	Chairman – of what? A hearing? Of the SBOE as a whole?	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
30	Jodi Bain	R16-4-106	Director - of SBOE as a whole as an appointed position?	"Director" does not appear in R16-4-106. See rule R16-4-101 Definitions. Reference is to A.R.S. § 42-16154.
31	Jodi Bain	R16-4-106	Note, 'Motion' is defined by stating 'aside from parliamentary procedures' – what does this mean or reference? Robert's Rules apply to the hearings now? To the SBOE as whole?	See preamble item 10 for changes to R16-4-101 which removed extraneous words. Reference is to the typical procedures and protocol used in a judicial hearings.

32	Jodi Bain	R16-4-106	'Review' is defined as 'quasi-judicial consideration' in the draft; What is this referring to?	"Review" removed from R16-4-101, Definitions, in response to public comment.
33	Jodi Bain	R16-4-106	'SBOE' is also defined in multiple ways: State Board of Equalization as a 'whole entity'?. Then as a member of the SBOE, and as a panel of members of the SBOE, etc. The SBOE is the State Board of Equalization as a whole. A member of the SBOE is a SBOE Board Member (for instance, etc.,).	Several comments referred to the connotation of the word "Board" or "Bord" (sic). In the Rule R16-101, Definitions, the acronym "SBOE" has four such connotations. For the rules that includes the word "Board" singularly, the acronym "SBOE" has replaced the word "Board" for clarity. This does not create a substantial change to the rule. See rules R16-4-102.E, R16-4-104.D, R16-4-106.B, R16-4-108, R16-4-109, and R16-4-117.
34	Jodi Bain	R16-4-102	R16-4-102: Jurisdiction of the SBOE - B.1 – 'property assessment changes' – what does this new wording mean?	R16-4-102 "property assessment changes" revised to "additions to, deletions from or splits or consolidations of assessment" as referenced in A.R.S. § 42-15105.
35	Jodi Bain	R16-4-102	B.6. – why was 'or an error in the tax rate' removed since the last draft in 2018'?	Accordingly, A.R.S. § 42-16154.A.3 - If the alleged error concerns the imposition of any tax rate, the notice shall be filed with the county board of supervisors. This does not apply to the SBOE.
36	Jodi Bain	R16-4-102	Perhaps the following is a missing items to add?- Improvements on Possessory Rights (IPRs)	Assessment of possessory improvements on government property is covered by A.R.S. § 42-15301 et seq.
37	Jodi Bain	R16-4-104	R16-4-104: Filing a Petition; Filing deadlines - This section appears to be missing reference to bulk filings, electronic filings and other electronically available mechanisms the SBOE uses.	Bulk filings are not included in the Final Rules. Bulk filing of appeals in electronic format limits the ability of the petitioner to include the basis and remarks initially filed to the assessor. The SBOE must confirm the basis for an appeal and the filing deadline. County assessors' electronic data systems do not capture the basis and remarks from the original petition. If the petitioner desires to file petitions electronically in bulk, the petitioner must submit a copy of the original petition to the SBOE.
38	Jodi Bain	R16-4-104	A.3.b. – 'Under all other provisions' referencing hard mail only as a requirement is confusing if the SBOE allows electronic filings or via email.	The Board does not allow filings via email. Email requires strict effort for quality control to ensure statutory compliance and deadlines are met . Not all appeals can be filed online due to compliance with current statues. Petitions emailed to the SBOE would place an undue burden on the SBOE staff and budget.
39	Jodi Bain	R16-4-104	A.4.c. and A.5 – 'evidence originally' filed to the assessor is unclear. If there is an electronic filing completed for an appeal to the SBOE, it now also asks for hard copies of the electronic filing? And then the Taxpayer/Petitioner is to provide another submission in triplicate of a written briefing and the respondent government is not so required? This is not the current process and appears unbalanced between the parties and a new requirement.	The SBOE must confirm the basis for an appeal and filing deadlines. County assessors electronic data systems do not capture the basis and remarks from a petition. A.R.S. § 42-16161 allows the Board to create an electronic means for filing an appeal. The current application does not allow document upload. At present a new appeals application is under development and will accommodate uploading of documents but only when filing an appeal. Otherwise, documents have to be sent to the SBOE as stated in the rules at R16-4-104(A)(6). The current process is identified in rule R16-4-104. For in-person hearings 3 copies of evidence are required for a panel of three and one copy for an individual hearing officer. During the pandemic, the SBOE must ensure all parties have exchange of evidence to be able to facilitate virtual hearings.

40	Jodi Bain	R16-4-104	A.6.a, b As written into this draft, the SBOE would going forward require the Taxpayer/Petitioner (and not the government respondent) to formally prepare and submit a written briefing or submission presentation for the hearing. <i>This is not current practice.</i> It is prejudicing the taxpayer/respondent and creating significantly new hurdles, regulation and bureaucracy for a Taxpayer/Petitioner.	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. Rule R16-4-104(A)(6) changed " <u>the petitioner</u> " to " <u>either party</u> " in reference to evidence submission and timeline; R16-4-110 was changed to clarify burden of proof as referenced in Arizona Revised Statutes.
41	Jodi Bain	R16-4-104	A.7. – New SBOE limitation on evidence (new or additional). This concept would be a new procedure and appears to actually limit the taxpayer/petitioner hearing information allowed to be used and ‘at the discretion’ of the board /hearing members.	The SBOE does not present any rule that exceeds its statutory authority. See A.R. S. 42-16051 et. seq. Rule R16-4-104(A)(6) changed "the petitioner" to "either party" in reference to evidence submission and timeline; R16-4-110 changed to clarify burden of proof as referenced in Arizona Revised Statutes.
42	Jodi Bain	R16-4-104.D	D. SBOE respect for ‘Confidentiality’ designation. The new section does not treat the parties equally. There is no mention of Taxpayer/Petitioner submittal information being or remaining confidential if it was provided and/or submittal as confidential (or noted as confidential) by the Taxpayer/Petitioner	See preamble item 10 for change to R16-4-104(D). SBOE hearings are public, and that confidentiality does not attach unless required by law or court order.
43	Jodi Bain	R16-4-105	See, for example, C.2. – the SBOE board may rule before a hearing is done where evidence would be provided? This is not ‘due process’. Idea - Perhaps this section should include a mechanism of oral argument request vs. ‘on the record motions’?	See rule R16-4-108(B)(3). This was changed and sequenced to allow opening argument.
44	Jodi Bain	R16-4-106	B. ‘Board’ – this needs to be defined.	Rule 116-4-106 was changed to indicate " Board" was replaced with "SBOE" throughout for clarity.
45	Jodi Bain	R16-4-106.C	C. SBOE discretion to allow telephonic hearings? If the taxpayer/respondent or assessor requests this, why not? What about zoom or other electronic formats not addressed?	On-the-Record (OTR) hearings are not conducive for all appeals. Since work year 2000, OTR hearings provide the SBOE the ability to facilitate unique time constraints for petitioners and for ADA compliance. It also accommodates hearings that are mechanical in nature to correcting assessor records. For these reasons the OTR hearings will continue. If an emergency exists that requires use of remote video hearings, the system used by the SBOE or County Board of Equalization for video conferencing should be used. The only requirement is that all participants to the hearing must possess the same evidence and be able to hear each other. This will satisfy open meeting law requirements.
46	Jodi Bain	R16-4-107	What does ‘for the convenience of the board’ mean here?	R16-4-107(A) was changed to more simply introduce "On-the-Record" hearings. The phrase "for the convenience of the board" was removed.
47	Jodi Bain	R16-4-107	D. Unable to follow - should this read ‘in subsection (B)’?.	No, (B) refers to On-the Record hearing requests in which both parties agree. (C) refers to on-the record hearing requests in which both parties do not agree. Since (D) is describing the hearing process for on-the record hearing requests in which both parties do not agree, the reference to (C) is correct..
48	Jodi Bain	R16-4-108	R16-4-108: Hearing Procedures - B.1. ‘board members’- Is this reference to the SBOE panel member or member presiding over the hearing?	Yes. See R16-4-108(B)(1).

49	Jodi Bain	R16-4-108	R16-4-108: Hearing Procedures - B.3. Currently, at each hearing the person or panel of the SBOE members hearing the petition do the following: (1) asks if the Assessor rep has a recommendation to the SBOE; (2) asks if there is a recommendation by the assessor - if the taxpayer/ petitioner accepts it or would like to comment and/or continue to opening remarks; (3) if no assessor recommendation to the SBOE – the taxpayer/ petitioner is asked to make their initial remarks and presentation of information/evidence and notifies the taxpayer/petitioner they will have an opportunity for rebuttal after the respondent responds to the taxpayer/petitioner initial remarks and presentation. This new rule appears to only allow initial remarks and presentation by the taxpayer/petitioner if an opening statement is allowed at the discretion of the SBOE. This does not follow current procedure. This new rule appears to only allow initial remarks and presentation by the taxpayer/petitioner if an opening statement is allowed at the discretion of the SBOE. This does not follow current procedure.	This comment is addressed by the insertion of additional language "the respondent will provide its recommendation for a reduction in noticed value or a change in legal class, if any." Implicit in the request for any recommendation is the petitioner's acceptance or rejection and the SBOE's examination of the offer for a sufficient basis in fact and law. See rule R16-4-108(B).
50	Jodi Bain	R16-4-108	C. This new paragraph is confusing. It appears to allow the SBOE presiding person or persons to require additional evidence. What is its purpose?	This rule was removed as it was unnecessary and unclear.
51	Jodi Bain	R16-4-108.E	E. 'As required by law...' What is this referring to? This is an unclear new parameter.	This rule was removed as it was unnecessary and unclear.
52	Jodi Bain	R16-4-109	R16-4-109: Rules of Evidence C. Draft language for C- IMPORTANT – reference to 'R16-4-104 (A)(6)' this is a reference to allowable Evidence. See above concerns, thoughts and ideas for clarification regarding R16-4-104.	This rule was simplified and clarified. The SBOE agrees that the citation of R16-4-104(A)(6) was incorrect and the citation was removed.
53	Jodi Bain	R16-4-109	D. Draft language for D- 'At the Board's discretion' – what does this mean? What are the parameters? What is this supposed to do?	R16-4-109(C) describes the discretion of the SBOE to determine if evidence is admissible as relevant and is not cumulative. It is customary for hearings to be informal where narrative testimony and argument are allowed during the case in chief by both parties and during the rebuttal by the petitioner. If the circumstances require a more formal hearing process, such as when the issues and evidence are complicated, direct and cross examination of witness by each party's counsel may be requested. This is the case for hearings involving the Department.
54	Jodi Bain	R16-4-110	R16-4-110: Proof - Burden of proof for what? To show the property is overvalued? Incorrect? Not concurrent with similar properties similarly situated per law or something else?	This rule was changed to clarify the difference between standard of proof and burden of proof. There is a presumption that an assessor's or the Department's valuation is presumed to be correct. It is the petitioner's burden to prove that it is not correct. If the petitioner overcomes this presumption, the evidence is reviewed to determine the correct value by a preponderance of the evidence. As described in the rule, a determination of certain errors requires clear and convincing evidence.

55	Jodi Bain	R16-4-116	A. 'the chairman'. For what? A.R.S. § 42-16161(A) states "The chairman of the state board may review any decision to ensure due process to all parties." But this new draft rule appears to expand that scope significantly. For instance: --Draft A.2. states 'irregularity, abuse of discretion or misconduct by a party'; --Draft A.3. states 'accident or surprise that could have been prevented by ordinary prudence.'; --Draft A.5. 'Errors'- various types of possible errors are addressed here. This does not appear to be a 'due process' element from current draft context. The two above examples (are some but not all) of scope increase appear to be well beyond simply to 'ensure due process to all parties'. Please review this section carefully.	This rule was removed based upon it being unnecessarily complicated and repetitious of A.R.S. § 42-16164(A) and due to public comment.
56	Jodi Bain	N/A	3. Draft procedures do not represent hearing practices in place.	The temporary, emergency procedures were put in place by the SBOE to comply with the Governor's Executive Orders regarding COVID-19 mitigation. These procedures included remote hearings by video and telephone, plus the submission of evidence at least three business days in advance of the hearing to the SBOE. The SBOE will respond to any future emergency orders due to emergency powers in A.R.S. § 26-301, et seq. These rules address hearing practices in place without the need for temporary, emergency procedures as explained.
57	Jodi Bain	N/A	4. Significant new taxpayer/petitioner submittal requirements.	Previously addressed above, see comment numbers 14, 16 and 20.
58	Jodi Bain	N/A	5. What is the respondent Assessor's obligation for filing, evidence, briefing, exchange of materials?	Previously addressed above, see comment number 16.
59	Jodi Bain	N/A	6. Unequal requirements between the parties.	Previously addressed above, see comment number 16.
60	Jodi Bain	R16-4-104	7. R16-4-104 Filing a Petition - a. This new draft rule significantly deviates from the actual filing and then hearing process and protocols.	In response to public comment the rule was modified to reflect current statute and filing instructions as documented in Department petition/filing forms.
61	Jodi Bain	R16-4-104	b. A new requirement of pre-submission of materials includes Taxpayers' written materials to the SBOE in advance of the hearing but not the Assessor Respondents. This is an unequal burden application.	Previously addressed above, see comment number 16.
62	Jodi Bain	R16-4-104	For years, the process has been that the Taxpayer brings its material to the hearing and provides it to the SBOE in 'real time' at the hearing. The new draft rules place new, additional and onerous regulatory burdens on, and added cost to, the Taxpayers to prepare and file a petition. It would require that Taxpayers make an additional submission to the SBOE of essentially a 'position paper' in advance upon filing and/or various days in advance of a scheduled hearing. Respectfully, if the SBOE thinks there is some good cause for this, why is the same burden not imposed on the Assessor?	See R16-4-104(A)(6). The SBOE does not present any rule that exceeds its statutory authority. The board has reviewed this comment and did not discover any rule that would unduly increase the cost to the petitioner's objective to file the petition and participate in a hearing.

63	Jodi Bain	R16-4-104	In addition, the draft SBOE Rules adjust notice of hearing schedule giving the Taxpayer/Petitioner fourteen (14) days notice of a SBOE hearing. This results in that the Taxpayer/Petitioner then immediately would be required to create and submit a 'position paper' and submit one, three or more copies via hard mail. The process is confusing in its wording. This is a significant deviation from current procedure and unnecessary cost to the Taxpayer.	See A.R.S. § 42-16163. The SBOE strictly complies with this law providing all participants at least a 14-day notice of the scheduled hearing date. Rule R16-4-104(6) was changed to include that evidence may "also be submitted in person at the hearing" which is the current practice.
64	Gail Sharp	N/A	(Not rules related) In Cochise County the petitioner is using the telephone to attend appeal hearings. If Cochise County is using Microsoft Teams then why isn't the petitioner also using Microsoft teams?	If an emergency exists that requires use of remote video hearings, the system used by the SBOE or County Board of Equalization for video conferencing should be used. The only requirement is that all participants to the hearing must possess the same evidence and be able to hear each other. This will satisfy open meeting law requirements.
65	Kathryn Wiseman	R16-4-104	R16-4-104(A)(4): One of the concerns about submitting appeals to the State Board is the Assessor's decision as well as all copies of the decision that was sent to the Assessor. In year's past we just sent page 1 of the Assessor's decision and the Agent Authorization. That's why I am concerned this year and I have questions on that very thing whether to send all the documentation that was attached. Now that I understand that is the procedure going forward each year. In the past, when the Assessor's came into the hearings and they provided all of their backup information to the Board Members. Now that the Assessor does not attend the hearing, it just leaves the petitioner on their own and then the Board Members aren't receiving all of the information from the Assessor where in the past they were directly from the Assessor when they came into the meeting. Now we will be making sure to ask the petitioner to provide all of the information to the Board. With the electronic submission, it is three days prior. Are you saying 5 days prior?	The emergency procedure for submission of evidence in advance is temporary due to SBOE's conduct of video hearings as a result of the COVID-19 pandemic. Once in-person hearings resume, the submission of evidence 3 days prior to the hearing will no longer be necessary. R16-4-104(A)(4) describes the regular procedure used for in-person hearings. The attachments to the petition filed with the assessor is part of the petition. R16-4-104(A)(4)(a) clarifies requirements set out in A.R.S. §§ 42-16051 and 42-16161. R16-4-104(A)(4)(b) clarifies requirements set out in A.R.S. § 42-16161(B).
66	Susan Fair	R16-4-107	R16-4-107: On the Records, they can be difficult because you have to read in the information that the petitioner has submitted and with 20 pages of evidence it is very difficult to read everything in that hearing.	In an On-the-Record hearing, evidence must be summarized in the recording by the SBOE in sufficient detail to identify the evidence considered and its relevance to the appeal, not read verbatim as the documentary evidence is already part of the record. The recording must provide a record of the evidence considered, the decision, and the reasoning that the SBOE used to arrive at the decision.
67	Dan Swango	N/A	Would there be any problem with hearings that are scheduled for fairly late in the season, say within a week of the October 15th, problem with them not getting the same chance to get information in as if it was earlier or is it just the luck of the draw with when you are scheduled?	Comment made by Dan Swango during rules public comment oral proceeding: If the evidence is not in the hearing room then it is up to the panel or the hearing officer to determine if the Board will allow that evidence. The party that wants to add the evidence must convince the Board of its relevance and then the Board will make a decision of its relevance as well as the decision to delay the hearing, postpone the hearing or have the hearing rescheduled. That will need to be addressed on a case-by-case basis and meet statutory deadlines.

68	Dan Swango	N/A	Would it be helpful to have any provision for that there may be variance for these rules in extenuating circumstances such as pandemics, national emergencies, state declared emergencies, extended internet or power outages which would give you the flexibility to have temporary rewrite and the authority to overwrite these rules.	The temporary, emergency procedures were put in place by the SBOE to comply with the Governor's Executive Orders regarding COVID-19 mitigation. These procedures included remote hearings by video and telephone, plus the submission of evidence at least three days in advance of the hearing to the SBOE and the other party. The SBOE will respond to any future emergency orders due to emergency powers in A.R.S. § 26-301, et seq. Therefore, creating a rule for future emergencies is unnecessary.
69	Mary Chandler	R16-4-108(B)	Petitioner's rebuttal does NOT come after FINAL arguments. In Rule R16-4-108 B Paragraph "6. Questions by the Board; final arguments, if requested by the Board;" needs to come AFTER Paragraph "7. Petitioner's rebuttal; and" We thought you had corrected this before. Now the inappropriate order has once again been incorporated in the rules. Please correct this. Paragraph 6 should read: "6. Petitioner's rebuttal;". Paragraph 7 should read "7. Questions by the Board; final arguments, if requested by the Board; and".	See change to Rule R16-4-108(B)(6) and (7). These items were interchanged to reflect current board practice and does not materially change the rule.
70	Gail Sharp	R16-4-104	Once these rules are set and put into place that when we file a petition to the State Board, we need a copy of the assessor's decision and anything they attach to that decision or we may not get a favorable decision? It'll be different than what it's been this year, year before, so on?	R16-4-104(A)(4)(B) clarifies that the Assessor's decision encompasses any and all pages included/attached to the Assessor's decision as provided to the petitioner in response to an appeal. The entire Assessor's decision must be submitted to the SBOE with the petition. The comment is in reference to the Pima County decision. The new Pima County assessor is reviewing the statement that appears on the Pima County decision.

- 71 Tom Naifeh R16-104(A)(4)(b) Furthermore, you placed a burden of uploading or mailing within 3 business days of electronic filing onto the petitioner. Previous rulemaking drafts had a 5 day window
- 72 Tom Naifeh R16-4-104(A)(4)(a)(ii) with R16-4-104(A)(4)(c) creates an unfair, impractical, and onerous situation to property owners and their representatives. The with R16-4-104(A)(4)(c) "Failure to comply with these requirements (that exceed statutory requirements as stated in ARS 42-16157(A)) shall result in an administrative dismissal of the appeal."
- 73 Tom Naifeh R16-4-104 Several comments claimed that the electronic filing procedures were burdensome to the taxpayer.
- 74 Tom Naifeh R16-4-104(A)(6) R16-4-104(A)(6) Will be confusing to the public; and training sessions of SBOE members the Arizona State Attorney Generals representatives (employees) stated 'The SBOE should generously allow any evidence into the cases that the SBOE hears'. The idea is for an informal, ease of process. This rule makes it the opposite. It allows unfair, inequitable, and unbalanced options from varying SBOE members and interpretations
- 75 Tom Naifeh R16-4-104 et al As we know from the recent Covid-19 issues, governmental offices were closed to the public and limits petitioner options for delivery. Many petitioners would not recognize this new burden and would allow statutorily accurate petitions to now be dismissed. The only option then is to file a court case and the costs, both for additional work, time, copies, and potential court fees and costs is onerous.

R16-4-108	Mary Chandler	R16-4-104 (A) (4)i	Comment: R16-4-104 (A) (4)i) Since attachments to the Assessor's decision are part of the Assessor's decision, and the statute requires a copy of the decision, the attachments need to be included. This rule does not require the petitioner to attach a copy of the Assessor's evidence at the Assessor's level.
R16-4-109	Mary Chandler	Rule R16-4-104 (A)(4)(b)	Comment: Rule R16-4-104 (A)(4)(b) -- The rule allowing 3 business days to perfect an electronic appeal actually expands the statutory deadline for filing an appeal. The electronic appeal without all the required components is not an appeal. Now that uploading of all requirements to perfect an appeal will be available, perhaps we should not allow bifurcated filing of an appeal.
76	Neil Konigsberg	Rule R16-4-104 (A)(4)(b)	COMMENT: rule R16-4-104(A)(4)(b)- why 3 business days? That's a short time frame which requires overnight mail.
77	Mary Chandler	R16-4-115	Comment R16-4-115 The appeal limit per statute is 60 days from the date of MAILING not RECEIPT as commented by Ms. Bain.
78	Mary Chandler	Rule 16-4-104 A (5) (c) (i) and (ii).	Rule No. R-16-4-104 A (5) (c) (i) and (ii). This rule creates an inequity between the parties. In the centrally assessed appeals the Department is required to provide five copies of its evidence to the Board for the five panel members while the Petitioner is only required to file four copies. The Board thus appears to be favoring the Petitioner. If the Board then makes a copy of the Petitioner's evidence, the Board is doing the Petitioner's job for it. Also note: the Petitioner's documents may be of such a nature that the Board's copy machine may not be able to make an exact copy for the Board's use.
79	Jodi Bain	R16-4-101	Definitions
80	Jodi Bain	R16-4-102	R16-4-102 Jurisdiction of the SBOE - Remains not addressed See Exhibit A per previous August 2020 submittal.

81	Jodi Bain	R16-4- 104	R16-4-104 Filing a Petition; Filing deadlines; This section appears to be missing reference to bulk filings, electronic filings and other electronically available mechanisms the SBOE uses.
82	Jodi Bain	R16-4- 105	Motion and service.
83	Jodi Bain	R16-4- 106	SBOE discretion.
		R16-4- 108	Hearing Procedures
84	Jodi Bain	R16-4- 109	Definition of "cumulative"
85	Jodi Bain	R16-4- 111	Subpoenas
86	Jodi Bain	R16-4- 112	Record of hearing and public record request.
87	Jodi Bain	R16-4- 115	Mailing of the decision and deadline.
88	Jodi Bain	R16-4- 116	Chairman's discretion.

The current practice of the SBOE is to accommodate the petitioner as provided by law. The rule includes perfecting the appeal in a timely manner. This rule was changed to affect the petition filing deadline by adding "of the petition filing deadline, whichever is later".

It is the taxpayer that must comply with ARS 42-16157. All petitions are vetted in accordance with this statute.

The SBOE mitigated any additional burdens caused by electronic filing procedures. The petitioner may elect to file paper documents instead. The SBOE has installed advanced technology and enhance procedures during and after the comment period that have overcome some of the contentions regarding electronic filing. This is a work in progress. ARS 42-16161(B).

The SBOE has experienced submissions of incomplete petitions. The Department created forms and instructions for submitting petitions. Along with the petition form, the Department requires a copy of the assessor's decision. In the past, some petitions have included only an excerpt of the assessor's decision and not the complete decision. R16-4-104(A)(4)(a)(ii) makes clear that all pages of the assessor's decision are required. See R16-4-104(A)(6).

The body of the final rules addresses each of these contentions.

In the past, some petitions have included only an excerpt of the assessor's decision and not the complete decision. R16-4-104(A)(4)(a)(ii) makes clear that all pages of the assessor's decision are required. See R16-4-104(A)(6).

In the past, some petitions have included only an excerpt of the assessor's decision and not the complete decision. R16-4-104(A)(4)(a)(ii) makes clear that all pages of the assessor's decision are required. See R16-4-104(A)(6).

The current practice of the SBOE is to accommodate the petitioner as provided by law. The rule includes perfecting the appeal in a timely manner. This rule was changed to affect the petition filing deadline by adding "of the petition filing deadline, whichever is later".

See ARS 42-16165 and 42-16168.

This rule is changed to reflect the current practice of the SBOE.

See Preamble Item 10 and 11

See Preamble Item 10 and 11

See Preamble Item 10 and 11. See revised rule.

See revised rule.

The SBOE complies with the American Disability Act. A party may request to appear by telephone.

This rule has been re-written for clarity and organizes hearing protocol.
Arizona Rules of Evidence 403.

This has been addressed in the final rules.

ARS 39-121 et al has been addressed in the final rules.

This rule reflects the current law. The statute refers to mail decision mail date. See ARS 42-16165 and 42-16168.

This rule has been changed for discretion of the Chairman and clarity.

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

(Authority: A.R.S. § 42-172.01 et seq.)

Editor's Note: Article 1, consisting of Sections R16-4-101 through R16-4-113, adopted by emergency rulemaking effective February 1, 1996. Emergency expired July 30, 1996 pursuant to A.R.S. § 41-1026(C). No rules have been filed with the Office of the Secretary of State for 16 A.A.C. 4 subsequent to the expiration of the rules (Supp. 99-3).

ARTICLE 1. EMERGENCY EXPIRED

Section

R16-4-101.	Emergency Expired
R16-4-102.	Emergency Expired
R16-4-103.	Emergency Expired
R16-4-104.	Emergency Expired
R16-4-105.	Emergency Expired
R16-4-106.	Emergency Expired
R16-4-107.	Emergency Expired
R16-4-108.	Emergency Expired
R16-4-109.	Emergency Expired
R16-4-110.	Emergency Expired
R16-4-111.	Emergency Expired
R16-4-112.	Emergency Expired
R16-4-113.	Emergency Expired
Exhibit A.	Emergency Expired
Exhibit B.	Emergency Expired

ARTICLE 1. EMERGENCY EXPIRED

R16-4-101. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-102. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-103. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-104. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-105. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-106. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in

effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-107. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-108. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-109. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-110. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-111. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-112. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

R16-4-113. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

Exhibit A. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

Exhibit B. Emergency Expired

Historical Note

Emergency rule adopted effective February 1, 1996, in effect for a maximum of 180 days (Supp. 96-1). Emergency rule expired July 30, 1996 (Supp. 99-3).

42-16151. Definition of state board

In this article, unless the context otherwise requires, "state board" means the state board of equalization.

42-16152. State board of equalization

The state board of equalization is established as an independent agency that is not subject to the supervision or control of the department of revenue.

42-16153. Members

A. The state board of equalization consists of:

1. Ten members who are appointed by the board of supervisors of each county with a population of more than five hundred thousand persons according to the most recent United States decennial census.
2. Ten members who are appointed by the governor from each county with a population of more than five hundred thousand persons according to the most recent United States decennial census.
3. An additional member who is appointed by the governor, who is designated as chairman and who serves in a full-time capacity.

B. Other than the chairman, members of the state board of equalization shall be selected on the basis of their work experience and other qualifications in at least one of the following categories:

1. Experience in at least three of the preceding eight years in property valuation, property tax appeals or appraising real property.
2. A certified general appraiser under section 32-3612.
3. A property valuation hearing officer or member of the state board of equalization, or any predecessor to the board, for at least three of the preceding eight years.
4. A member of the state bar of Arizona with at least three years of experience in property valuation or condemnation practice.
5. Experience in at least three of the preceding eight years as a real estate broker.

C. Members who are appointed by the county board of supervisors serve at the pleasure of the county board for terms that expire at the same time as the elective term of the county supervisors. Members who are appointed by the governor serve a term of five years. Members may be reappointed.

D. Except as provided in section 42-16154, subsection A, members of the state board are eligible to receive:

1. Not more than three hundred dollars per day for time spent in performing official duties, prorated for partial days spent on official duty.
2. Reimbursement for travel and other expenses as provided by law for other state officers.

E. Members who are appointed by a county shall be paid by the county. Members who are appointed by the governor shall be paid by the state.

F. A member of the state board of equalization shall not:

1. Hold any other public office under the laws of this state or a political subdivision of this state except a position on a board or commission that does not regularly interact with the state board of equalization.
2. Be a candidate for an elective office under the laws of this or any other state.
3. Hold any position of trust nor provide or engage in any occupation or business that would conflict with the duties of a member of the board.
4. Other than the chairman, have been employed by a county assessor or county attorney or by the department of revenue or the department of law within two years before appointment.

G. The governor may remove any member of the state board who was not appointed by a county board of supervisors for any of the following reasons:

1. Cause.
2. Failure to carry out the duties and responsibilities of the position.
3. Failure to follow the rules of the board.
4. Failure to follow the directions of the chairman as provided by law.

42-16154. Chairman; administration; meetings

A. The governor shall appoint the chairman of the state board who is responsible for the administration and operation of the board. The position of chairman is a full-time position. The chairman is eligible to receive compensation pursuant to section 38-611.

B. The state board shall meet at the call of the chairman as often as necessary to accomplish the duties prescribed by law and may hold meetings or hearings at any location in the counties that appoint members to the board. Members of the state board shall act under the direction of the chairman in carrying out their duties and responsibilities as provided by law and the rules of the board.

C. The members of the state board shall adopt administrative rules and rules of procedure for hearings before the board. The state board of equalization may adopt by reference judicial rules and rules of the state board of tax appeals to the extent that they apply to the proceedings of the state board of equalization. All hearings that are conducted before the state board, either by the board or a panel, a member or a hearing officer of the board, shall be conducted according to the rules.

42-16155. Hearing officers and employees

A. Subject to title 41, chapter 4, article 4, the state board of equalization may employ one or more hearing officers who must meet the same qualifications prescribed for the members of the board by section 42-16153.

B. Any training activity for hearing officers shall be held in public with notice as prescribed by title 38, chapter 3, article 3.1.

C. A hearing officer is eligible to receive up to three hundred dollars per day for time spent in performing official duties.

D. Subject to title 41, chapter 4, article 4, the state board may appoint a chief clerk and any other employees that it considers to be necessary to carry out its duties.

42-16156. Case assignment

A. The chairman or chief clerk of the state board shall assign tax cases on a random basis to members of the board to be heard as provided by this article. This subsection does not prevent the chairman or chief clerk from taking into account in assigning tax cases the availability of members, real or potential conflicts of interest of members or the convenience of petitioners or their representatives who file multiple petitions.

B. The chairman or chief clerk shall assign each case involving:

1. Appeals of property valuations that are determined by the department and equalization orders that are issued pursuant to statute to members of the board who are appointed by the governor. This paragraph does not apply to any properties that are valued by the department but would otherwise be valued by the county assessor.

2. Property listed as class three pursuant to section 42-12003 or property valued by the assessor at three million dollars or less to be heard by at least one member of the board or by a hearing officer who shall be from the county in which the property is located.

3. Any other property to a panel of either three or five members of the board, at least two of whom shall be from the county in which the property is located unless the chairman is sitting as a representative of that county. The chairman of the board shall designate a member to act as chairman of each panel. When possible, at the chairman's discretion, on any panel:

(a) Of three members, no more than one member may have been employed by a county assessor or county attorney or by the department of revenue or the department of law within four years.

(b) Of five members, no more than two members may have been employed by a county assessor or county attorney or by the department of revenue or the department of law within four years.

C. The chairman may sit on any case as a hearing officer representing any county.

42-16157. Appeal of valuation or legal classification from county assessor to state board of equalization

A. Except as provided in subsection C or D of this section, if the county assessor denies all or part of a petition under section 42-16055, and if a county board of equalization is not established in the county where the property is located, the petitioner may appeal the assessor's decision to the state board of equalization by filing with the state board, within twenty-five days after the date that the assessor's decision was mailed to the petitioner, a copy of the written basis of the decision according to the instructions on the petition.

B. The department may contest any proposed valuation or classification or any proposed change in valuation or classification before the state board. If, in the director's opinion, a decision of an assessor is erroneous, the director may appeal the assessor's decision to the state board within twenty-five days after the assessor's decision was mailed to the taxpayer and the department. In such an action the taxpayer shall raise any defense the taxpayer has to liability for the tax and any additional tax sought to be imposed. If issues other than valuation or classification are raised by either party, the action shall be tried as if it were an action pursuant to section 42-11005 or 42-11052.

C. A property owner who receives a notice of valuation under section 42-15105 may appeal the valuation or legal classification to the state board as provided in subsection A of this section within twenty-five days after the date of the assessor's notice.

D. A property owner whose petition is denied, in whole or in part, pursuant to section 42-19051 may only appeal the valuation or legal classification to the state board as provided in subsection A of this section within twenty days after the date of the assessor's notice of refusal or decision.

E. The state board may contract with any county with a population of less than five hundred thousand persons according to the most recent United States decennial census to review and hold hearings and make decisions on petitions filed under section 42-16105. These hearings shall be conducted in the county in which the property of the subject hearings is located.

42-16158. Appeal of valuation or legal classification from department to state board of equalization

A. A property owner who is not satisfied with the valuation or legal classification of the property as determined by the department may appeal to the state board by filing a petition with the state board that is postmarked on or before October 1 or within fifteen days after the department mails its decision to the property owner, whichever date is later. The state board shall prescribe the form of and procedure for filing the petition by administrative rule.

B. The state board shall notify the petitioner of the time and place of the hearing. The petitioner:

1. May appear before the state board at such time as the board may direct.
2. Is entitled to be heard at any hearing regarding the valuation or legal classification of the property.
3. Shall show cause why the valuation or legal classification should be changed.

C. If the state board orders the valuation or legal classification to be changed, it shall immediately transmit a copy of the order to the property owner and to the officers of this state and the county, city or town in charge of tax assessments who shall correct the tax roll accordingly.

42-16159. Hearing on department equalization order

A. At the request of a county assessor who receives an equalization order issued by the department under chapter 13, article 6 of this title, the state board shall hold a hearing and issue its decision within fifteen days after receipt of an appeal pursuant to section 42-13255.

B. The state board shall receive testimony from the department and the assessor on the merits of the equalization order as to:

1. The proper application of standard appraisal methods and techniques.

2. The rules and guidelines of the department as they relate to the order.
 3. Any errors in the information or methodology used by the department to determine the necessity for the order, including changes in the valuation of property that were not included in the information used by the department.
 4. Any other evidence relating to the validity of the order.
- C. Revisions to the equalization order are effective for the valuation year in which the equalization order was issued.

42-16160. Recommendation for future equalization orders

The state board at any time may recommend to the department properties that in the state board's opinion should be included in the department's next review of property under chapter 13, article 6 of this title.

42-16161. Filings and hearings

- A. If the state board maintains an electronic filing system, a party may transmit required information to the board in a format that is compatible with the board's filing system. The board's transmitted receipt is evidence that the board acknowledges that the petitions were filed for purposes of this article.
- B. A person whose petition under article 2 of this chapter was denied in whole or in part and who appeals to the state board shall file with the state board:
 1. A copy of the notice of the assessor's original valuation and legal classification.
 2. A copy of the written basis of the assessor's subsequent decision on the petition.
- C. Each hearing shall be held in the county in which the property is located. With the permission of all parties, the state board may conduct telephonic hearings when appropriate.
- D. The hearing officer, board member or panel shall act on the petition, shall hear testimony presented in person at the hearing and may subpoena witnesses to testify regarding the petition. Unless all parties agree otherwise, each party shall submit evidence in person.
- E. The decision shall be based on evidence presented by the parties attending the hearing.

42-16162. Decision of the state board

- A. Based on the evidence presented at a hearing on an appeal, the state board shall either grant or refuse the request of the petition, in whole or in part, as the state board considers just and proper. The decision of the state board shall not exceed the assessor's noticed valuation and recommended classification. A decision by the state board does not limit a party from appealing the decision in a manner prescribed by law. The state board may increase individual parcels within an economic unit in a multiple parcel appeal when considering the equitable valuation of an economic unit not to exceed the total aggregate valuation of the multiple parcel appeal on the agreement of both parties.
- B. In considering any petition filed by any person, the state board shall review and consider all competent evidence relating to full cash value, including, if presented, the valuation of similar property that is similarly situated.

42-16163. Hearing notices

Unless otherwise provided by law, all notices of hearings on appeals before the state board shall be mailed at least fourteen days before the hearing.

42-16164. Decisions

A. The hearing officer, board member or panel shall issue its decision at the conclusion of the hearing, except that in appropriate cases, the chairman of the state board may authorize the hearing to be continued for additional deliberation. The chairman of the state board may review any decision to ensure due process to all parties.

B. The board shall issue the decision in writing to each party and, in all cases, to the department by mail.

42-16165. Deadlines for issuing decisions

The state board shall complete all hearings and issue all decisions under this article on or before October 15 of each year, except for:

1. Cases involving property valued by the department, in which case the decisions shall be issued on or before November 15.
2. An appeal under section 42-16157, subsection C, which shall be completed on or before the third Friday in November of the calendar year preceding the year in which the taxes are levied.
3. In the case of a personal property appeal under section 42-19052, the state board of equalization shall complete the hearing and issue a decision on or before December 1 of the calendar year in which the taxes are levied.

42-16166. Transmitting changes in valuations or legal classifications

On or before the fourth Friday in November of each year the state board shall transmit to:

1. The assessor of each county a statement of changes, if any, that it has made in the valuation or legal classification of any property in the county that is valued by the county assessor.
2. The department a statement of changes, if any, that it has made in the valuation or legal classification of:
 - (a) Any property that is valued by the department.
 - (b) Property of taxpayers who pay their taxes to the department, except that in the case of private car companies, the statement shall be transmitted on or before October 31.

42-16167. Entry of changes and completion of roll

If the board of supervisors makes any changes to valuations ordered by the state board of equalization it shall:

1. Add up on the roll the entries of:
 - (a) Valuation of each description of property.
 - (b) Valuation of each class of property, as valued.
 - (c) Total valuations.
2. Enter all totals on the roll.

42-16168. Appeal to court

A. Any party, or the department, that is dissatisfied with the valuation or classification of property reviewed by the state board may appeal to court as provided by section 42-16203.

B. Appeals from all other orders and decisions of the state board shall be as provided by law.

42-16169. Finality of decision

Any decision of the state board of equalization pertaining to the valuation or classification of property is final when an appeal has not been taken within the time prescribed by section 42-16203. No person may plead such a decision in any proceeding as a bar to raising any valuation or classification issue relating to any other year.

42-16203. Appeal from state board of equalization to court

A. Any party, or the department, that is dissatisfied with the valuation or classification of property reviewed by the state board of equalization may appeal to court as provided by this article.

B. The department or a county assessor who is dissatisfied with the determination by the state board of an equalization order under section 42-16159 may appeal to the court as provided by this article.

C. An appeal to court shall be taken within sixty days after the date of mailing of the state board's final decision.

D. Appeals resulting from a change in value due to correcting a property tax error pursuant to article 6 of this chapter shall be filed within sixty days after the date of mailing of the state board's decision.

42-15105. Supplemental notice and appeal of valuation or classification in case of new construction, changes to assessment parcels and changes in use

For property that is valued by the assessor, in the case of new construction, additions to, deletions from or splits or consolidations of assessment parcels and changes in property use that occur after September 30 of the preceding year and before October 1 of the valuation year:

1. The assessor shall notify the owner of the property of any change in the valuation or legal classification on or before September 30 of the valuation year.

2. Within twenty-five days after the date of the assessor's notice, the property owner may appeal the valuation or legal classification to the state board of equalization if the property is located in a county with a population of five hundred thousand persons or more or to the county board of equalization if the property is located in any other county.

42-16053. Rejection of petition for failure to include substantial information; amended petition; appeal

If the county assessor rejects a petition because it fails to include substantial information required by sections 42-16051 and 42-16052, and if the notice of rejection is mailed:

1. On or before June 15, the petitioner may file an amended petition with the assessor within fifteen days after the notice of rejection is mailed.

2. After June 15, the petitioner may appeal within fifteen days to:

(a) The county board of equalization as provided by article 3 of this chapter, if a county board is established in the county.

(b) The state board of equalization, if a county board is not established in the county.

42-16056. Appellate rights

A. If the assessor grants the requested relief, the petitioner may not appeal the ruling.

B. If the petitioner and the assessor reach an agreement within five business days after the conclusion of the meeting, both parties shall sign the agreement, and both parties waive the right to further appeal.

C. If all or part of the petitioner's request is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the requested

change with a copy of the petition. Within twenty-five days after the assessor's decision is mailed, a petitioner whose request is denied may appeal to:

1. The county board of equalization, if a county board is established in the county, as provided by article 3 of this chapter.
 2. The state board of equalization, if a county board is not established in the county, as provided by article 4 of this chapter.
 3. Superior court as provided by article 5 of this chapter.
- D. A person who owns, controls or possesses property that is valued by the county assessor may not appear before the county or state board of equalization without first having filed a petition with the assessor as provided by this article unless otherwise authorized by law. A person shall not raise any issue if the issue was not included in the petition filed under this article.

42-16158. Appeal of valuation or legal classification from department to state board of equalization

- A. A property owner who is not satisfied with the valuation or legal classification of the property as determined by the department may appeal to the state board by filing a petition with the state board that is postmarked on or before October 1 or within fifteen days after the department mails its decision to the property owner, whichever date is later. The state board shall prescribe the form of and procedure for filing the petition by administrative rule.
- B. The state board shall notify the petitioner of the time and place of the hearing. The petitioner:
1. May appear before the state board at such time as the board may direct.
 2. Is entitled to be heard at any hearing regarding the valuation or legal classification of the property.
 3. Shall show cause why the valuation or legal classification should be changed.
- C. If the state board orders the valuation or legal classification to be changed, it shall immediately transmit a copy of the order to the property owner and to the officers of this state and the county, city or town in charge of tax assessments who shall correct the tax roll accordingly.

42-16252. Notice of proposed correction; response; petition for review; appeal

- A. Subject to the limitations and conditions prescribed by this article, if a tax officer determines that any real or personal property has been assessed improperly as a result of a property tax error, the tax officer shall send the taxpayer a notice of proposed correction at the taxpayer's last known address by:
1. Certified mail, return receipt requested, if correction of the error results in an increase in the full cash value or change in legal classification of the property.
 2. First class mail or, at the taxpayer's written request, delivery by common carrier or electronic transmittal, if correction of the error does not result in an increase in the valuation of the property.
- B. The notice shall:
1. Be in a form prescribed by the department.
 2. Clearly identify the subject property by tax parcel number or tax roll number and the year or years for which the correction is proposed.
 3. Explain the error, the reasons for the error and the proposed correction of the error.
 4. Inform the taxpayer of the procedure and deadlines for appealing all or part of the proposed determination before the tax roll is corrected.
- C. Within thirty days after receiving a notice of proposed correction, the taxpayer may file a written response to the tax officer that sent the notice to either consent to or dispute the proposed correction of the error and to state the grounds for disputing the correction. A failure to file a written response within thirty days constitutes consent to the proposed correction. A taxpayer may file a request for an extension of time within thirty days after receiving the notice of proposed correction. The extension of time may not exceed thirty days. If an extension is granted, any response that is not filed within the extended due date constitutes consent to the proposed correction.

D. The taxpayer may appeal any valuation or legal classification issue that arises from the proposed correction as provided in this section.

E. If the taxpayer consents to the proposed correction, or consents to the proposed correction but disputes the proposed valuation or legal classification as provided on the form prescribed by the department, the tax roll shall be promptly corrected to allow property taxes to be levied and collected in all subsequent tax years, but no additional tax, interest or penalty may be imposed for the current tax year or any tax year preceding the date of the notice of proposed correction.

F. If the taxpayer disputes the proposed correction or the proposed valuation or legal classification, the tax officer shall meet with the taxpayer or the taxpayer's representative in any case in which the taxpayer has timely filed a written response to discuss the proposed correction. If after the meeting the tax officer and the taxpayer reach an agreement on all or part of the proposed correction, the tax officer and the taxpayer shall each sign an agreement and the tax roll must be promptly corrected to the extent agreed on.

G. If after the meeting the parties fail to agree on all or part of the proposed correction, the tax officer shall serve a notice on the taxpayer by certified mail within thirty days after the meeting date advising the taxpayer that the tax roll will be corrected to the extent agreed on. The taxpayer may file a petition on a form prescribed by the department with the board of equalization within thirty days after the date of the notice or it is barred. On receiving the petition, the board shall hold a hearing on the disputed issues in the proposed correction within thirty days and shall issue a written decision pursuant to the board's rules.

H. A party that is dissatisfied with the decision of the board may appeal the decision to court within sixty days after the date the board's decision is mailed, but any additional taxes that are determined to be due must be timely paid before delinquency for the court to retain jurisdiction of the matter.

42-16254. Notice of claim; response; petition for review; appeal

A. If a taxpayer believes that the taxpayer's property has been assessed improperly as a result of a property tax error, the taxpayer shall file a notice of claim with the appropriate tax officer, either personally or by certified mail, as follows:

1. If the alleged error concerns the valuation or classification of property by the county assessor, the notice shall be filed with the assessor. On receiving the notice, the assessor shall immediately transmit a copy to the department.
2. If the alleged error concerns the valuation or classification of property by the department, the notice shall be filed with the department.
3. If the alleged error concerns the imposition of any tax rate, the notice shall be filed with the county board of supervisors. The clerk of the board of supervisors shall notify each affected taxing entity to allow the entity to file a response to the claim.

B. The notice shall:

1. Be in a form prescribed by the department.
2. Clearly identify the subject property by tax parcel number or tax roll number and the year or years for which the correction is proposed.
3. State the claim and the evidence to support the claim for correcting the alleged error.

C. Within sixty days after receiving a notice of claim, the tax officer may file a written response to the taxpayer to either consent to or dispute the error and to state the grounds for disputing the error. A failure to file a written response within sixty days constitutes consent to the error, and the board of supervisors shall direct the county treasurer to correct the tax roll on the taxpayer's written demand supported by proof of the date of the notice of claim and the tax officer's failure to timely dispute the error.

D. If the tax officer disputes the error, the tax officer shall notify the taxpayer of a time and place for a meeting between a representative of the tax officer and the taxpayer or the taxpayer's representative within sixty days to discuss the basis for the dispute.

E. If, after the meeting, the parties agree on all or part of the notice of claim, the tax roll must be corrected promptly to the extent agreed on and any taxes that have been overpaid shall be refunded pursuant to section 42-16259.

F. If the parties fail to agree on all or part of the notice of claim, the taxpayer may file a petition with the board of equalization on a form prescribed by the department and shall send a copy to the tax officer by certified mail. The petition must be filed with the board within ninety days after the date of the meeting or it is barred. On receiving the petition, the board shall hold a hearing on the disputed issues in the notice of claim within thirty days and shall issue a written decision pursuant to the board's rules.

G. A party that is dissatisfied with the decision of the board may appeal the decision to court within sixty days after the date the board's decision is mailed, but any additional taxes that are determined to be due must be timely paid before delinquency for the court to retain jurisdiction of the matter. In addition, in order for a taxpayer to recover a refund for taxes paid in a preceding tax year as a result of an error, all taxes that were levied and assessed against the property for the tax year must be paid before delinquency in order for the court to retain jurisdiction of the matter.

42-19052. Appeal from assessor

A. A person who appeals to the assessor pursuant to section 42-19051 may appeal to:

1. The county board of equalization, if a county board has been established in the county, within twenty days after the date of the assessor's notice of refusal or decision. The appeal shall be in the same manner as prescribed by chapter 16, article 3 of this title.
2. The state board of equalization, if a county board has not been established in the county, within twenty days after the date of the assessor's notice of refusal or decision. The appeal shall be in the same manner as prescribed by chapter 16, article 4 of this title.

B. Any party that is dissatisfied with the decision of the board may appeal the decision to court as prescribed in chapter 16, article 5 of this title.

DOUGLAS A. DUCEY
Governor



GEORGE R. SHOOK
Acting Chairman

ARIZONA STATE BOARD OF EQUALIZATION

100 North Fifteenth Avenue, Suite 130
Phoenix, Arizona 85007
(602) 364-1600
<http://www.sboe.az.gov>

February 24, 2022

Governor's Regulatory Review Council
ATTN: Simon Larscheidt
100 N. 15th Avenue Suite 305
Phoenix, Arizona 85007

Subject: Request for Revision of Notice of Final Rulemaking

The Arizona State Board of Equalization respectfully requests the Governor's Regulatory Review Council approve the Notice of Final Rulemaking for this agency with the changes itemized below.

Item No. 1 R16-4-116(A)

Change from:

R16-4-116(A) A party does not exhaust its administrative remedies after a hearing and decision by the SBOE if the party does not file a motion for rehearing or review.

To:

R16-4-116(A) ~~A party does not exhaust its administrative remedies after a hearing and decision by the SBOE if the party does not file a motion for rehearing or review.~~ **After a hearing is held and a decision is rendered by the SBOE, a party is not required to file a motion for rehearing or review of the decision in order to exhaust its administrative remedies.**

Explanation: The original sentence was incorrect and confusing. The replacement language is consistent with administrative law. A party may appeal an unfavorable decision directly to court without seeking a rehearing or review.

Item No. 2 R16-4-116(C)

Change from:

R16-4-116(C) No later than 10 days after a hearing in which the SBOE announced a decision, any party to that hearing may, pursuant to A.R.S. § 41-1062(B), file with the SBOE Chairman a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A

motion for rehearing or review under this Section may be amended at any time before the SBOE Chairman rules upon the motion.

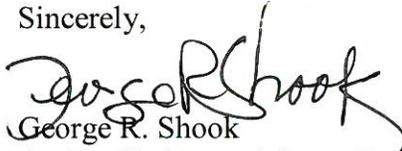
To:

R16-4-116(C) No later than ~~10~~ **15** days after a hearing in which the SBOE announced a decision, any party to that hearing may, pursuant to A.R.S. § 41-1062(B), file with the SBOE Chairman a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before the SBOE Chairman rules upon the motion.

Explanation: A.R.S. § 41-1062(B) requires that the agency rule be "drawn as closely as practicable from rule 59, Arizona rules of civil procedure." Rule 59 provides a 15-day period after a court decision for a party to request a rehearing or review.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "George R. Shook". The signature is written in a cursive, flowing style with some loops and flourishes.

George R. Shook
Acting Chairman Arizona State Board of Equalization

DOUGLAS A. DUCEY
Governor



GEORGE R. SHOOK
Acting Chairman

ARIZONA STATE BOARD OF EQUALIZATION

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March 22, 2022

Krishna Jhaveri
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste 305
Phoenix, Arizona 85007

Dear Mr. Jhaveri:

During the GRRC meeting held February 22, 2022 at 10:00 am, concerns were voiced regarding the complexity of the SBOE's rules with specific concerns about proposed rules relating to subpoenas (proposed rule R16-4-111) and relating to confidentiality of taxpayer evidence in shopping center appeals, review and rehearing (proposed rule R16-4-116). In addition, there were questions regarding the SBOE's statutory authority for its rules. Addressed following are the objectives of the SBOE in its rulemaking, a brief summary of Arizona's property-tax issues dealt with by the SBOE, an explanation of why the SBOE has no statutory authority to restrict public access to hearings and files regarding shopping-center appeals, support for the proposed rule on subpoenas and support for the proposed rule on review and rehearing of SBOE decisions.

SBOE's Rulemaking Objectives for Council Consideration

The SBOE's objective in this rulemaking is to create rules that reflect the customary practice at the SBOE and to enable the SBOE to provide relief to parties whose property may be improperly valued or improperly classified in accordance with Arizona statutes. A.R.S. § 42-16154(C) states "The members of the state board shall adopt administrative rules and rules of procedure for hearings before the board. The state board of equalization may adopt by reference judicial rules and rules of the state board of tax appeals to the extent that they apply to the proceedings of the state board of equalization. All hearings that are conducted before the state board, either by the board or a panel, a member or a hearing officer of the board, shall be conducted according to the rules."

SBOE's purpose in these rules is to give legal notice of the SBOE's procedures. Instructions and information for taxpayers to use in making their appeal to the SBOE is available

on the SBOE's website and through SBOE staff. Placing this material on the website allows the SBOE to quickly deal with any misunderstanding and confusion. Once the SBOE's proposed rules are finalized, additional material will be placed on the website to assist taxpayers.

Arizona Property Tax

Property tax is a complicated subject. Arizona taxes certain real and personal property. These taxes are based upon property values set by county assessors for locally assessed properties and the Department of Revenue for statutorily (centrally) assessed properties.

For most property types, value is assessed using standard appraisal methods. Some property types are valued based upon a statutory method. Statutes limit the increase of the value used to compute the tax. This value, also known as the limited property value, is reduced to assessed value based upon property type using a ratio set by statute. For instance, a property used as a dwelling with a limited value of \$250,000 would be assessed at \$25,000 or 10%. This is the assessment ratio set by statute for homes. The ratio set for shopping centers for 2022 is 17.5%. Each taxing district, such as county, city, school or special district is provided the total net assessed value for properties located within that district. Put simply, the district would take its budgeted levy amount and divide it by the net assessed value to arrive at its tax rate. Tax rates vary each year based upon the taxing district's budgetary needs and the fluctuations in the total net assessed values within the district's boundary. Thus, increases or decreases in valuations in the district will inversely impact the district's tax rate.

For example, the 2021 net assessed value for Maricopa County was \$48,724,126,672. The property tax levy approved by the Board of Supervisors was \$655,778,021. The property tax rate for tax year 2021 for Maricopa General County Fund was \$1.3459 per \$100 of assessed value. While the tax levy and values in a large county may not be impacted much by a reduction in value by the SBOE or the tax court, taxing districts such as a small school district or special district could be greatly affected by value adjustments for a few properties. It is appropriate for values to be corrected so that each taxpayer is fairly taxed, but care must be taken to not make unsupported reductions for a few taxpayers that must be paid by their neighbors.

Duties and Responsibilities of the SBOE

Each year, the county assessors and Department of Revenue notify each property taxpayer of the full-cash value and legal classification of their property. The full-cash value is the starting point in determining the amount of tax levied against each property. The legal classification is based upon the type of property. Statutes set forth how the classification is made and its impact on the assessment for each property type.

For locally assessed real property, the county assessor mails the notice of value for each parcel to the taxpayer. This notice contains the value and the legal classification for the parcel and, if the taxpayer disagrees with the value or classification, instructions on how to appeal.

The first level of appeal is made to the assessor. If the taxpayer still disagrees with the valuation or classification, an appeal may be taken to the board of equalization.

The Arizona State Board of Equalization exists for property located in counties with populations greater than 500,000. Currently, the SBOE hears cases in Pima and Maricopa counties.

The SBOE is an independent agency that is not subordinate to the Department of Revenue. Appeals to the SBOE begin when the taxpayer or the taxpayer's agent files a petition with the SBOE for the review of valuation or classification resulting from a decision made by the assessor or the Department of Revenue. The assessor or Department of Revenue may appear to defend its decision on behalf of taxpayers who are not parties to the case. While informal, SBOE hearings are necessarily adversarial and require strict procedures to provide due process to both parties.

Confidentiality Concerns

16-4-104(D) Evidence and testimony are public information.

A.R.S. §§ 38-431 et seq., 39-121 et seq., A.R.S. §§ 42-13202(B) and 42-2003(C)(1)(a).

The SBOE is a public agency. A.R.S. § 42-16152 (creating the SBOE as an independent state agency). As such, it is subject to open meeting and public record laws. A.R.S. §§ 38-431 et seq., 39-121 et seq. Because the collection of evidence and testimony is required for its statutory function, all evidence and records of testimony received by the SBOE are public records. A.R.S. §§ 39-121.01(B) and 41-151(2)(a) (describing records as materials created or received by an agency in the conduct of its public business). All such records are presumed to be open for public inspection. *Carlson v. Pima County*, 141 Ariz. 487, 491 (1984). However, this presumption may be overcome by a statute requiring that the record be kept confidential. *Berry v. State*, 145 Ariz. 12, 13-14 (App. 1985). Within the article that created the SBOE, there is no statute instructing the SBOE to maintain any of its hearing records as confidential. Title 42, Chapter 16, Article 4 of Ariz. Rev. Stat.

Comments to the SBOE's proposed rules argue that A.R.S. § 42-13202(B) requires the SBOE to maintain confidential all items offered by the taxpayer pursuant to the shopping center valuation article. This statute, however, is directed toward the county assessor, not the SBOE. The statute is contained within Title 42, Chapter 13, Ariz. Rev. Stat. wherein directions for valuation are set for locally assessed real property. Article 1 of this chapter describes the relationship between the county assessors and the Department of Revenue. Article 2 details some general requirements on valuation by assessors. Article 5 addresses specific valuation methods to be used by the assessor for qualified shopping centers. More particularly, A.R.S. § 42-13202(B) states that "all information that a taxpayer submits pursuant to this article is confidential pursuant to chapter 2, article 1 of this title." Chapter 2, Article 1 of Title 42 deals with the confidentiality of taxpayer information by the Department of Revenue. These statutes

outline circumstances when taxpayer's confidential information may be released by the Department of Revenue and, in the case of assessing shopping centers, the county assessor. The confidential information may be released by the Department of Revenue or the assessor for an administrative or court hearing so long as the taxpayer is a party to the case. A.R.S. § 42-2003(C)(1)(a). Thus, the assessor may release the confidential information in an open SBOE hearing when the taxpayer is the petitioner. Of course, the taxpayer is free to disclose the information as part of its offer of evidence.

Subpoena Concerns

R16-4-111 Subpoenas

A.R.S. §§ 12-2212, 41-1062(A)(4) and 42-16161(D); Ariz. R. Civ. P. 45

Agencies, such as the SBOE, have authority to issue subpoenas, but enforcement of its subpoenas must be taken at superior court. Statutory requirements for a subpoena issued by the agency include: that fees for witness attendance are the same as required for superior court, that the subpoena must be personally served; and the required information that the subpoena must contain. A.R.S. § 1062(A)(4) and Ariz. R. Civ. P. 45. The details in the SBOE proposed rule are intended to provide a clear process for a requesting party to be issued a subpoena that is enforceable by the superior court. The rule also makes clear that the SBOE's subpoena power only extends to compulsion of a witness to testify at a hearing and not for production of documents or testimony at a prehearing deposition. A.R.S. § 16161(D). Statutes authorizing the SBOE to issue subpoenas use the term "may" in the grant of authority to indicate that the SBOE's subpoena power is discretionary. The proposed rule follows Rule 45 as closely as possible to assist the court in its enforcement. Many components of Rule 45 were not used because they exceed the authority of the SBOE or did not aid the party in preparing an enforceable subpoena. Since the SBOE does not have jurisdiction over third-party witnesses, the formalities such as reasonable purpose, witness fees and personal service must be observed.

Review and Rehearing Concerns

R16-4-116 Review of the SBOE Decision

A.R.S. § 41-1062(B); Ariz. R. Civ. P. 59

For the SBOE to grant a review or rehearing of its decisions requires a rule that is "drawn as closely as practicable from rule 59, Arizona rules of civil procedure." A.R.S. § 41-1062(B). The SBOE's proposed rule follows the relevant portions of Rule 59. Ariz. R. Civ. P. 59. Portions that were removed include those that deal with juries and other factors that are not relevant to administrative hearings. One concern that the rule addresses is to avoid ex parte communication between the party requesting the review or rehearing and the SBOE Chairman.

The procedures in the proposed rule provide for the delivery of the request upon the SBOE and the other party to the case. The rule also provides the ability for the SBOE Chairman to delegate the review or rehearing to a member or panel of members of the SBOE. This is important in cases where ex parte communication with the SBOE Chairman has occurred or to accommodate scheduling the rehearing within the statutory time frame.

R16-4-103.B		An attorney authorized in Arizona representing the taxpayer.								
R16-4-103.C	32-3651 et al, 42-16001	A property tax agent, as defined at A.R.S. § 32-3651, who has been designated under A.R.S. § 42-16001;								
R16-4-103.D		For appeals filed by the assessor.								
R16-4-103.E		For appeals filed by the Department.								
R16-4-103.F	Arizona Supreme Court Rule 39	An immediate family member may represent the owner of the property. A non-family member may represent if owner's signature is notarized.								
R16-4-104 Filing a Petition; Filing Deadlines		The SBOE must comply with statutory deadlines for various appeal type. Notice of Valuation/Classification are annually sent to the real property owner prior to March 1st. If the property owner and assessor disagree, a petition for appeal is made to the SBOE within 25 days of the assessor meeting decision mail date. The SBOE must complete this type appeal by October 15th of the valuation year. Properties valued by the Department are appealed to the SBOE prior to October 1st. These appeals must be heard and decided by November 15th. Notice of Change in Valuation or Classification sent from the assessor to the owner prior to September 15th are appealed to the SBOE within 25 days after the mailing of the notice. These appeals must be heard and decided prior to the third Friday in November. Valuation of Personal Property are appealed to the SBOE after July 1st. These appeals must be heard and decided prior to December 1st. Appeals file pursuant to the error correction statutes may be filed throughout the calendar year. The SBOE must hear and decided these appeals within 30 days after receipt of the petition.								
R16-4-104.A	42-16051 mandates the petition must be filed on form prescribed by the Department.	The appeal is initiated with the assessor. This process identifies the type of appeal. This process establishes the basis for the appeal; market, cost, income or other. ARS 42-16051 requires the petitioner to provide elements of attesting to the basis for the appeal. "1. Under the income approach, including the information required in section 42-16052. (2.) Under the market approach, including the full cash value of at least one comparable property in the same geographic area or the sale of the subject property. (3.) Under the cost approach, including the cost to build or rebuild the property plus the land value.								
R16-4-104.A.1		Petitioner must use the form prescribed by the Department								
R16-4-104.A.1.a	42-15105, 42-16053, 42-16056, 42-16157	Notice of Valuation Real Property appeal (Assessor appeal decision sent late spring to late August, taxpayer has 25 days to file with SBOE), Amended Notice appeal (Assessor sends valuation notice late September, taxpayer has 25 days to file with SBOE)								
R16-4-104.A.1.b	42-16158	Centrally Valued Property appeal (Deadline to appeal to the SBOE is October 1 or within 15 days after the department mails its decision to the property owner, whichever is later.)								
R16-4-104.A.1.c	42-16252	Notice of Proposed Correction sent to the taxpayer. The taxpayer can file an appeal with the SBOE within 30 days after the taxpayer meeting date with the assessor. This type appeal can be filed at any time during any calendar year retrospectively.								

R16-4-116.G	42-16164.A	For the purposes of this section, "due process" means a hearing was conducted by an impartial board member, panel or hearing officer during which each of the parties had the opportunity to submit relevant and probative evidence and testimony in support of their case.								
R16-4-116.H	42-16164.A									
R16-4-116.I	42-16164.A									
R16-4-117 SBOE Member Participation in Matters before the SBOE										
R16-4-117.A	A.R.S. Title 38, Chapter 3, Article 8									
R16-4-117.A.1										
R16-4-117.A.2										
R16-4-117.B	A.R.S. Title 38, Chapter 3, Article 8, 38-506, 38-510									
R16-4-117.C										
RESPONSE TO WHY CONFIDENTIALITY IS NOT REFERENCED IN THE RULES:		Arizona Attorney General Opinion 78-234, (1978)								

Ariz. Op. Atty. Gen. No. I78-234 (Ariz.A.G.), 1978 WL 18873

Office of the Attorney General

State of Arizona

I78

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234

(R75-76)

October 2, 1978

*1 Charles Moody, Chairman
Board of Tax Appeals
1645 West Jefferson
Phoenix, Arizona 85007

Dear Mr. Moody:

You have asked several questions relating to the duties and responsibilities of the Board of Tax Appeals. Your first question is whether, with regard to centrally-assessed property, the taxpayer is entitled to the information on which the valuation of the property was based.

The general rule of access to 'public records' and 'other matters' in public offices is established in **Arizona** by A.R.S. § 39-121. However, judicial exceptions to this rule have been established. While 'public records' will always be open to public inspection, if the disclosure of 'other matters' would breach a privilege or violate a provision of confidentiality, or if disclosure would be detrimental to the interest of the State, then disclosure is not required under those circumstances. Mathews v. Pyle, 75 **Ariz.** 76, 251 P.2d 893 (1952).¹ Records relating to a determination of a taxpayer's property tax valuation are not by statute declared to be privileged or confidential as to any member of the public. Whether disclosure of such records to the public would be detrimental to the interests of the State would be a matter for the custodian of the records initially to determine. However, we suggest that the disclosure of the contents of the record would not be detrimental to the State simply because of the possibility that a taxpayer might use such information in actions challenging his property tax assessment.

In the absence of a determination that the disclosure of the records to the public would be detrimental to the interests of the State, any member of the public has a right to inspect such records. Such records would include the work-sheets which show the information that the Department considered and the calculations that it made in arriving at the determination of the value of a taxpayer's property. As a member of the public, a taxpayer is entitled to all information in the possession of the State that was utilized in determining the valuation of his property, unless disclosure of that information or a portion of it would be detrimental to the interest of the State. If disclosure of a portion of the information would be detrimental to the interests of the State, then members of the public should be permitted to inspect only those records which would not involve detrimental disclosures.

You have also asked when a person is entitled to inspect this information. In **Arizona** Atty.Gen.Op. No. 70-1, we noted that there is some authority in other jurisdictions that the right of inspection cannot be exercised at such times and in such manner as to cause disruption of public business. The public is entitled to inspect the information within a reasonable time after the request is made, at a time and in a way which will not cause a disruption of public business.

You have asked what the powers of the Board of Tax Appeals are with regard to the issuance of subpoenas. The Administrative Procedures Act, A.R.S. §§ 41-1001, et seq., establishes the general powers and authority of administrative agencies. The Board of Tax Appeals has only the powers granted by statute, Kendall v. Malcolm, 98 **Ariz.** 329, 404 P.2d 414 (1965), and it cannot acquire greater power through the adoption of rules and regulations.

*2 Subpoenas may be issued by the Board on the application of one of the parties. A.R.S. § 41-1010 provides in part:

...

4. The officer presiding at the hearing may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence . . . Unless otherwise provided by law or agency rule, subpoenas so issued shall be served and, upon application to the court by a party or the agency, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(Emphasis added.)

The Board also has independent power to issue subpoenas pursuant to A.R.S. § 12-2212.

You have also asked what the 'inherent' powers of the Board are regarding hearings. The Board's powers, rather than being inherent, are set forth in A.R.S. §§ 41-1001 *et seq.* and A.R.S. §§ 42-141 *et seq.* The Board has the responsibility of maintaining orderly proceedings and exercising its discretion reasonably in order that the parties will receive the minimum safeguards of procedural due process in Board hearings. The fundamental requisite of due process is an opportunity to be heard which includes:

(1) Timely and adequate notice, detailing reasons for the proposed action.

(2) Opportunity to present evidence and cross-examine adverse witnesses.

(3) The right to be represented by counsel.

(4) Decision maker's conclusion must rest solely on the law and the evidence adduced at the hearing. To demonstrate compliance with this requirement the decision maker should state the reasons for his determination and indicate the evidence he relied on. This is the purpose of findings of fact and conclusions of law.

(5) An impartial decision maker. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

The Board also has the power to ask questions of witnesses to clear up ambiguities in the evidence.

Your final question asks whether the Board's records which contain information concerning an appeal of property valuation are public records. The Supreme Court's *opinion* in *Arizona Press Club v. Arizona Board of Tax Appeals*, 113 *Ariz.* 545, 558 P.2d 697 (1976) dealt with the issue of whether the Board's deliberations prior to the rendering of a decision must be public under A.R.S. § 38-431.01. The Court stated, 113 *Ariz.* at 547:

The procedures prescribed by statute and followed by the Board of Tax Appeals in hearing the parties in open forum, taking this matter under advisement, deliberating, writing a written decision and making that decision available to the parties and the public, follow the classic procedures of an appellate court in making a judicial decision.

The legislative response to this decision was the enactment by the Legislature of Chapter 128, Laws 1977, which clarified the legislative intent to make the open meeting law applicable to deliberations of the State Board of Tax Appeals. A.R.S. § 38-431.08(A) as amended, now provides:

*3 The provisions of this article shall not apply to any judicial proceedings of any court or any political caucus.

(Emphasis added.)

This legislative response did not alter the holding in the *Arizona Press Club* case, *supra*, that Board of Tax Appeals hearings are judicial in nature. Rather, the amendment was intended to limit the application of the 'judicial proceeding' exemption in A.R.S.

§ 38-431.08 to courts, thereby excluding administrative tribunals acting in a judicial capacity from the exception. When the Board's hearings and deliberations are open to the public, as now required under A.R.S. § 38-431.01, certainly the files are also. In the absence of special statutes, court files are generally treated as public records. Probate files have been held to be public records. Henderson v. Las Cruces Production Credit Ass'n, 6 Ariz.App. 549, 435 P.2d 56 (1968). Since the Board's functions have been characterized as judicial in the Arizona Press Club case, supra, and judicial files are public records, it follows that the Board's files are public records and therefore open to reasonable inspection by the public.

Very truly yours,

JOHN A. LASOTA, JR.
Attorney General

Footnotes

- 1 For purposes of the remainder of this discussion, our use of the term 'records' shall mean those documents which constitute 'other matters' within the purview of A.R.S. § 39-121.
Ariz. Op. Atty. Gen. No. I78-234 (Ariz.A.G.), 1978 WL 18873

End of Document

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D-9

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 25, Articles 7, 8, and 12

Amend: R9-25-701, R9-25-703, R9-25-704, R9-25-705, R9-25-706, R9-25-707, R9-25-708, R9-25-709, R9-25-710, R9-25-711, R9-25-712, R9-25-801, R9-25-802, R9-25-803, R9-25-804, R9-25-805, R9-25-806, R9-25-1201, Table 12.1

Repeal: R9-25-705, R9-25-714, R9-25-716, R9-25-717, R9-25-718, R9-25-801, R9-25-806, Table 8.1

Renumber: R9-25-705, R9-25-706, R9-25-707, R9-25-708, R9-25-708, R9-25-709, R9-25-710, R9-25-711, R9-25-712, R9-25-713, R9-25-715, R9-25-801, R9-25-802, R9-25-803, R9-25-804, R9-25-807



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 11, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 25, Articles 7, 8, and 12 Emergency Medical Services

Amend: R9-25-701, R9-25-703, R9-25-704, R9-25-705, R9-25-706, R9-25-707, R9-25-708, R9-25-709, R9-25-710, R9-25-711, R9-25-712, R9-25-801, R9-25-802, R9-25-803, R9-25-804, R9-25-805, R9-25-806, R9-25-1201, Table 12.1

Repeal: R9-25-705, R9-25-714, R9-25-716, R9-25-717, R9-25-718, R9-25-801, R9-25-806, Table 8.1

Renumber: R9-25-705, R9-25-706, R9-25-707, R9-25-708, R9-25-708, R9-25-709, R9-25-710, R9-25-711, R9-25-712, R9-25-713, R9-25-715, R9-25-801, R9-25-802, R9-25-803, R9-25-804, R9-25-807

Summary:

This regular rulemaking from the Department of Health Services (Department) relates to rules in Title 9, Chapter 25, Articles 7, 8, and 12, regarding air ambulances. These rules establish requirements for licensing air ambulance services and for registration of air ambulances in order to ensure the health and safety of patients being transported. This rulemaking seeks to improve the rules to make them clearer, more concise, and more understandable, as well as to implement a course of action proposed in a 5YRR on these rules that the Council approved on July 6, 2017, wherein the Department identified several issues with the rules in Articles 7, 8 and 12.

The Department is requesting the standard 60-day delayed effective date for this rulemaking. The Department received approval from the rulemaking moratorium to initiate this rulemaking on April 19, 2019 and final approval to submit this rulemaking to the Council on January 24, 2022.

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

Yes. The Department cites both general and specific statutory authority for the rules.

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

This rulemaking does not establish a new fee and does not contain a fee increase.

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

The Department did not review or rely on a study in conducting this rulemaking.

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

The Department is conducting this rulemaking to make the rules clearer and easier to understand and also to address issues it identified in the 2017 SYRR for these rules. In addition, this rulemaking addresses issues that stakeholders identified during a 2019 survey in anticipation of this rulemaking and as part of the informal rulemaking process to develop proposed rules.

Rules that are clearer, easier to understand, and better organized are expected to provide a significant benefit to all affected persons. The rules also add requirements for documentation, make changes related to corrective action plans, make changes to the requirements for supplies and equipment, and specify protocol for communicating information during a transfer of care. While some parties may incur costs to come into compliance with the rules, the rules are expected to provide significant benefits for all stakeholders.

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

The Department anticipates all stakeholders to have significant benefits from the rulemaking while limiting costs. The Department believes there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

6. What are the economic impacts on stakeholders?

The Department anticipates that the rulemaking may affect the Department; air ambulance services; ground ambulance services, and other EMS providers; hospitals and other health care institutions licensed under 9 A.A.C. 10 and hospitals operating under federal or tribal law; emergency medical care technicians (EMCTs); patients and their families; and the general public.

The Department believes that having additional reporting requirements will incur a minimal increase in costs for the Department, but provide a significant benefit from having the reported data. Changes related to an air ambulance service terminating operations at a specific location may provide a significant benefit to the Department while causing a minimal (\$2,000 or less) increase in costs to work with such an air ambulance service. The changes related to corrective action plans may cause the Department to incur as much as a minimal increase in costs to review submitted corrective action plans, but may also cause a minimal-to-moderate (\$20,000 or less) decrease in costs related to enforcement.

Many of the clarifying changes to make the rules more understandable are expected to provide a significant benefit to air ambulance services and applicants. In many cases, if an air ambulance service has not been complying with the current requirements due to misunderstanding the requirements, the Department believes their clarification could cause an air ambulance service to incur as much as moderate (\$2,000-\$20,000) costs to come into compliance with such requirements. Provisions for an aircraft leased by an air ambulance service to be registered as an air ambulance may prove to be a substantial (\$20,000 or more) benefit to an air ambulance service or applicant. Changes related to an air ambulance service terminating operations at a specific location may provide a moderate benefit to an air ambulance service. While the preparation and implementation of a corrective action plan may cause an air ambulance service to incur up to substantial costs, the Department believes that the inclusion of provisions for submission of a corrective action plan in lieu of enforcement actions may provide as much as a substantial benefit to an air ambulance service. Changes to the requirements for supplies and equipment may provide as much as a moderate benefit to an air ambulance service, depending on the number of aircraft used by the air ambulance service, the number of missions performed, and list of agents the administrative medical director has authorized for use, while potentially causing the air ambulance service to incur as much as moderate costs.

EMCTs may incur a significant burden from documentation requirements, but may receive a significant benefit from changes to required equipment and supplies and from being able to provide better patient care.

Adding requirements to specify the content of the protocol for communicating information during a transfer of care required may provide a significant benefit to a hospital/other health care institution, another ambulance service or an EMS provider. By

improving patient care, this requirement is also expected to provide a significant benefit to patients and their families and the general public.

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

The Department states in Item 10 of the Preamble that it made minor, clarifying changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

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

The Department did not receive any comments in conducting this rulemaking.

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

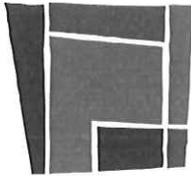
The Department states that A.R.S. § 36-2214 authorizes the Department to issue a license to an air ambulance service that meets criteria established by statute and rule, which the Department considers to be a general permit. A.R.S. § 36-2212 authorizes the Department to issue a certificate of registration for operation of an aircraft as an air ambulance, and considers the certificate of registration to be a general permit. The Department complies with A.R.S. § 41-1037.

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

The Department indicates that there is no corresponding federal law to these rules.

11. **Conclusion**

In this regular rulemaking, the Department seeks to improve the rules related to air ambulances, implementing a course of action proposed in its 2017 5YRR for these rules. The Department is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

January 20, 2022

VIA EMAIL: grrc@azdoa.gov

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

RE: Department of Health Services, 9 A.A.C. 25, Articles 7, 8 and 12, Regular Rulemaking

Dear Ms. Sornsins:

1. The close of record date: September 28, 2021
2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C.25, Articles 7 and 8, relates to a five-year-review report approved by the Council on July 6, 2017. In addition, the rulemaking addresses issues identified by stakeholders as part of the informal rulemaking process and updates language and cross-references in Article 12.
3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does not establish a new fee.
4. Whether the rulemaking contains a fee increase:
The rulemaking does not contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. 41-1032:
No, the Department is requesting the normal 60-day delay after approval for the effective date for the rules.

The Department is requesting that the rules be heard at the Council meeting on April 5, 2022.

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

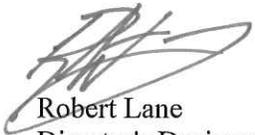
The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

- a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
- b. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
- c. General and specific statutes authorizing the rules.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,



Robert Lane
Director's Designee

RL:rms

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director

NOTICE OF FINAL RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

PREAMBLE

<u>1.</u>	<u>Article, Part or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
	R9-25-701	Amend
	R9-25-703	Amend
	R9-25-704	Amend
	R9-25-705	Repeal
	R9-25-705	Renumber
	R9-25-705	Amend
	R9-25-706	Renumber
	R9-25-706	Amend
	R9-25-707	Renumber
	R9-25-707	Amend
	R9-25-708	Renumber
	R9-25-708	Amend
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	R9-25-710	Amend
	R9-25-711	Renumber
	R9-25-711	Amend
	R9-25-712	Renumber
	R9-25-712	Amend
	R9-25-713	Renumber
	R9-25-714	Repeal
	R9-25-715	Renumber
	R9-25-716	Repeal
	R9-25-717	Repeal

R9-25-718	Repeal
R9-25-801	Repeal
R9-25-801	Renumber
R9-25-801	Amend
R9-25-802	Renumber
R9-25-802	Amend
R9-25-803	Renumber
R9-25-803	Amend
R9-25-804	Renumber
R9-25-804	Amend
R9-25-805	Amend
R9-25-806	Repeal
R9-25-807	Renumber
Table 8.1	Repeal
R9-25-1201	Amend
Table 12.1	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. §§ 36-132(A)(1), 36-136(G), 36-2202(A)(4), and 36-2209(A)(2)

Implementing statutes: A.R.S. §§ 36-2201, 36-2202(A)(3) and (5), 36-2204, 36-2212, 36-2213, 36-2214, 36-2215, 36-2240(4)

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests the normal 60-day delayed effective date for this rulemaking.

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: 25 A.A.R. 1271, May 17, 2019

Notice of Rulemaking Docket Opening: 26 A.A.R. 1946, September 2020

Notice of Proposed Rulemaking: 27 A.A.R. 1297, August 27, 2021

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

Name: Rachel Garcia, Bureau Chief

Address: Arizona Department of Health Services
Division of Public Health Services

Bureau of Emergency Medical Services and Trauma System
150 N. 18th Avenue, Suite 540
Phoenix, AZ 85007

Telephone: (602) 364-3150
Fax: (602) 364-3568
E-mail: Rachel.Garcia@azdhs.gov

or

Name: Robert Lane, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, 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.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. The Department has adopted rules to implement these statutes in 9 A.A.C. 25. The rules in 9 A.A.C. 25, Articles 7 and 8 establish requirements for licensing air ambulance services and for registration of air ambulances, respectively, to ensure the health and safety of patients being transported. In a five-year-review report approved by the Governor's Regulatory Review Council on July 6, 2017, the Department identified several issues with the rules and proposed a rulemaking to address these issues. These issues include non-compliance with A.R.S. § 41-1080, unnecessary or duplicative requirements, unclear requirements, obsolete requirements, and poor organization of the rules. All of these issues may affect the effectiveness of the rules and, thus, threaten the health and safety of patients being transported. The Department also requested input from stakeholders to identify additional issues. After receiving an exception from the Governor's rulemaking moratorium established by Executive Order 2019-01, the Department began revising the rules in 9 A.A.C. 25, Articles 7 and 8, to address these issues and other issues identified by stakeholders

as part of the rulemaking process and to restructure the rules to improve clarity, remove duplication, and increase effectiveness. The Department also identified changes needed in Article 12 of the Chapter to address issuing an approval of a license with a corrective action plan to an air ambulance service and to correct cross-references to renumbered Sections. The new amendments 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 summary of the economic, small business, and consumer impact:

The Department anticipates that the rulemaking may affect the Department; air ambulance services, ground ambulance services, and other EMS providers; hospitals and other health care institutions licensed under 9 A.A.C. 10 and hospitals operating under federal or tribal law; emergency medical care technicians (EMCTs); patients and their families; and the general public. Annual costs/revenues changes are designated as minimal when more than \$0 and \$2,000 or less, moderate when between \$2,000 and \$20,000, and substantial when \$20,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. As of July 2021, the Department licenses 19 entities as air ambulance services under the rules in 9 A.A.C. 25, Article 7, and 131 air ambulances, operated by these licensees, are registered under Article 8.

Having rules that are clearer, easier to understand, and better organized may provide a significant benefit to all affected persons. If an air ambulance service has not been complying with these current requirements due to misunderstanding the requirement, the Department believes their clarification could cause an air ambulance service to incur as much as moderate costs to come into compliance. Changes to applications may provide a significant benefit to the Department and may cause an air ambulance service to incur as much as a minimal cost to comply with the changes. The proposed rules include provisions for an aircraft leased by an air

ambulance services to be registered as an air ambulance. This change may prove as much as a substantial benefit to an air ambulance service or applicant.

Additional requirements for documentation are included in the proposed rules, as are requirements for reporting information to the Department and exceptions to some requirements. The Department estimates that these changes may cause the Department to incur a minimal increase in costs and to receive a significant benefit from having the reported data. The Department anticipates that changes related to an air ambulance service terminating operations at a specific location may provide a significant benefit to the Department and hospitals/health care institutions relying on the air ambulance service, while causing the Department at most a minimal increase in costs to work with such an air ambulance service and hospital. The Department believes that some of these changes may provide up to a moderate benefit to an air ambulance service, while others may cause an air ambulance service to incur as much as moderate costs to implement the requirement or come into compliance, if not already performing these activities as routine operations or as a standard of care. EMCTs may also incur a significant burden from documentation requirements, but may receive a significant benefit from changes to required equipment and supplies and from being able to provide better patient care.

The changes related to allowing corrective action plans may cause the Department to incur as much as a minimal increase in costs to review submitted corrective action plans, but may also cause a minimal-to-moderate decrease in costs related to enforcement. While the preparation and implementation of a corrective action plan may cause an air ambulance service to incur up to substantial costs, the Department believes that the inclusion of provisions for submission of a corrective action plan in lieu of enforcement actions may provide as much as a substantial benefit to an air ambulance service.

Requirements for supplies and equipment are also being changed to reflect the current standards of care. The Department believes that these changes may provide as much as a moderate benefit to an air ambulance service, depending on the number of aircraft used by the air ambulance service, the number of missions performed, and list of agents the administrative medical director has authorized for use, while potentially causing the air ambulance service to incur as much as moderate costs. Changing requirements for supplies and equipment to current standards may also provide an EMCT with a significant benefit.

There are many instances in which an air ambulance service either receives a patient for transport from or transfers care of a patient to a hospital/other health care institution or a ground ambulance service or other EMS provider. The proposed rules specify the content of the protocol

for communicating information during a transfer of care required in R9-25-201(E)(2)(d)(i). The Department anticipates that adding these requirements to the rules to clarify an existing requirement in Article 2 of the Chapter may cause an air ambulance service to incur as much as moderate costs to come into compliance, and to provide a significant benefit to a hospital/other health care institution, another ambulance service, or an EMS provider. By improving patient care, this requirement is also expected to provide a significant benefit to patients and their families and the general public.

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

Between the proposed rulemaking and final rulemaking, the Department further reorganized Sections in both Articles of the rulemaking to improve the flow of the rules and enhance their effectiveness. Corresponding changes were made to correct cross-references to the reorganized Sections. No other changes were made to the rules between the proposed rulemaking and the final rulemaking.

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

During the formal public comment period, the Department received no written comments about the rules and no regulated entities or members of the public attended the oral proceeding held on September 28, 2021.

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:

A.R.S. § 36-2214 authorizes the Department to issue a license to an air ambulance service that meets criteria established by statute and rule. Although the activities that an air ambulance service is authorized to undertake are specified on the license, based on criteria in rule, the Department considers the license to be a general permit. A.R.S. § 36-2212 authorizes the Department to issue a certificate of registration for operation of an aircraft as an air ambulance. The Department considers the certificate of registration to be 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:

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 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

Section

- R9-25-701. Definitions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)
- R9-25-703. Requirement and Eligibility for a License (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)
- R9-25-704. ~~Initial~~ Application and Licensing Process (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215)
- ~~R9-25-705. Renewal Application and Licensing Process (A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215)~~
- ~~R9-25-710~~R9-25-705. Minimum Standards for Operations (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)
- ~~R9-25-711~~R9-25-706. Minimum Standards for Mission Staffing (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)
- ~~R9-25-713~~R9-25-707. Minimum Standards for Training (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213)
- ~~R9-25-715~~R9-25-708. Minimum Standards for Medical Control (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)
- ~~R9-25-707~~R9-25-709. Changes Affecting a License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213)
- ~~R9-25-706~~R9-25-710. Term and Transferability of License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, and 41-1092.11)
- ~~R9-25-708~~R9-25-711. Inspections and Investigations (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, and 36-2214)
- ~~R9-25-712.~~ ~~Expired~~
- ~~R9-25-709~~R9-25-712. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, 36-2215, 41-1092.03, and 41-1092.11(B))
- R9-25-713. Renumbered
- R9-25-714. ~~Minimum Standards for Communications (A.R.S. §§ 36-2202(A)(3) and (4),~~

~~36-2209(A)(2), and 36-2213) Repealed~~

R9-25-715. Renumbered

R9-25-716. ~~Minimum Standards for Recordkeeping (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213) Repealed~~

R9-25-717. ~~Minimum Standards for an Interfacility Neonatal Mission (A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213) Repealed~~

R9-25-718. ~~Minimum Standards for an Interfacility Maternal Mission (A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213) Repealed~~

ARTICLE 8. AIR AMBULANCE REGISTRATION

Section

~~R9-25-801. Definitions (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2212)~~

~~R9-25-802.~~R9-25-801. Requirement, Eligibility, and Application for an Initial or Renewal Certificate of Registration for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4))

~~R9-25-807.~~R9-26-802. Minimum Standards for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(3), (4), and (5); 36-2209(A)(2); and 36-2212)

~~R9-25-804.~~R9-25-803. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), and 36-2212)

~~R9-25-803.~~R9-25-804. Term and Transferability of Certificate of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)

R9-25-805. Inspections (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 36-2232(A)(11))

R9-25-806. ~~Enforcement Actions (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2212, 36-2234(L), 41-1092.03, and 41-1092.11(B)) Repealed~~

R9-25-807. Renumbered

Table 8.1. ~~Minimum Equipment and Supplies Required on Air Ambulances, By Mission Level and Aircraft Type (Authorized by A.R.S. §§ 36-2202(A)(3), (4), and (5); 36-2209(A)(2); and 36-2212) Repealed~~

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

Section

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

Table 12.1. Time-frames (in days)

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

R9-25-701. Definitions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in this Article and in Article 8 of this Chapter, unless otherwise specified:

1. “Air ambulance” means an aircraft that is an “ambulance” as defined in A.R.S. § 36-2201.
2. “Air ambulance service” means an ambulance service that operates an air ambulance.
3. “Application packet” means the information, applicable fees, and documents required by the Department when making a decision for:
 - a. Licensing an air ambulance service, or
 - b. Issuing a certificate of registration for an air ambulance.
- ~~3.4.~~ “Base location” means a physical location at which a person houses an air ambulance or equipment and supplies used for the operation of an air ambulance service or provides administrative or other support for the operation of an air ambulance service.
4. ~~“Business organization” means an entity such as an association, cooperative, corporation, limited liability company, or partnership.~~
5. ~~“Call number” means a unique identifier used by an air ambulance service to identify a specific mission.~~
- ~~6.5.~~ “CAMTS” means the Commission on Accreditation of Medical Transport Systems, formerly known as the Commission on Accreditation of Air Medical Services.
6. “Certificate holder” means a person who holds a current and valid certificate of registration for an air ambulance.
7. “Change of ownership” means a transfer of controlling legal or controlling equitable interest and authority in an air ambulance service.
8. “Critical care” means pertaining to a patient ~~whose condition requires care commensurate with the scope of practice of a physician or registered nurse~~ who has an illness or injury acutely impairing one or more organ systems, such that the conditions are life-threatening and require constant monitoring to avoid deterioration of the patient’s condition.
9. “Estimated time of arrival” means the number of minutes from the time that an air ambulance service agrees to perform a mission to the time that an air ambulance arrives at the scene.

- ~~10.~~ ~~“Holds itself out” means advertises through print media, broadcast media, the Internet, or other means.~~
- ~~11-10.~~ “Interfacility” means between two health care institutions.
11. “Interfacility maternal transport” means an interfacility transport of a woman:
- a. Whose pregnancy is considered by a physician to be high risk,
 - b. Who is in need of critical care services related to the pregnancy, and
 - c. Who is being transferred to a medical facility that has the specialized perinatal and neonatal resources and capabilities necessary to provide an appropriate level of care.
12. “Interfacility neonatal transport” means an interfacility transport of an infant who is 28 days of age or younger and who is in need of critical care services.
- ~~12-13.~~ “Licensed respiratory care practitioner” has the same meaning as in A.R.S. § 32-3501.
14. “Licensee” means a person who holds a current and valid license from the Department to operate an air ambulance service.
- ~~13.~~ ~~“Maternal” means pertaining to a woman whose pregnancy is considered by a physician to be high risk, who is in need of critical care services related to the pregnancy, and who is being transferred to a medical facility that has the specialized perinatal and neonatal resources and capabilities necessary to provide an appropriate level of care.~~
- ~~14-15.~~ “Medical team” means personnel whose main function on a mission is the medical care of the patient being transported.
- ~~15-16.~~ “Mission” means a transport ~~job~~ event that involves an air ambulance service’s sending an air ambulance to a patient’s location to provide transport of the patient from one location to another, whether or not transport of the patient is actually provided.
17. “Mission level” means critical care services or ALS services, based on the staffing and the services provided by the air ambulance service.
18. “Mission type” means an emergency medical services transport, interfacility transport, interfacility maternal transport, or interfacility neonatal transport provided by an air ambulance service.
- ~~16.~~ ~~“Neonatal” means pertaining to an infant who is 28 days of age or younger and who is in need of critical care services.~~
- ~~17-19.~~ “On-line medical guidance” means emergency medical services direction or information provided to a non-EMCT medical team member by a physician through two-way voice communication.

- ~~18-20.~~ “Operate an air ambulance in this state” means:
- a. Transporting a patient via air ambulance from a location in this state to another location in this state,
 - b. Operating an air ambulance from a base location in this state, or
 - c. Transporting a patient via air ambulance from a location in this state to a location outside of this state more than once per month.
- ~~19-21.~~ “Owner” means a person that holds a controlling legal or equitable interest and authority in a business ~~enterprise~~ organization.
- ~~20.~~ ~~“Patient reference number” means a unique identifier used by an air ambulance service to identify an individual patient.~~
- ~~21-22.~~ “Personnel” means individuals who work for an air ambulance service, with or without compensation, whether as employees, contractors, or volunteers.
- ~~22-23.~~ “Premises” means each physical location of air ambulance service operations and includes all equipment and records at each location.
- ~~23-24.~~ “Proficiency in neonatal resuscitation” means current and valid certification in neonatal resuscitation obtained through completing a nationally recognized training program such as the American Academy of Pediatrics and American Heart Association NRP: Neonatal Resuscitation Program.
- ~~24.~~ ~~“Publicizes” means makes a good faith effort to communicate information to the general public through print media, broadcast media, the Internet, or other means.~~
25. “Regularly” means at recurring, fixed, or uniform intervals.
- ~~26.~~ ~~“Rescue situation” means an incident in which:~~
- ~~a. An individual’s life, limb, or health is imminently threatened; and~~
 - ~~b. The threat may be reduced or eliminated by removing the individual from the situation and providing medical services.~~
- ~~27-26.~~ “Subspecialization” means:
- a. For a physician board certified by a specialty board approved by the American Board of Medical Specialties, subspecialty certification;
 - b. For a physician board certified by a specialty board approved by the American Osteopathic Association, attainment of either a certification of special qualifications or a certification of added qualifications; and
 - c. For a physician who has completed an accredited residency program, completion of at least one year of training pertaining to the specified area of medicine.

- ~~28-27.~~ “Two-way voice communication” means that two individuals are able to convey information back and forth to each other orally, either directly or through a third-party relay.
- ~~29-28.~~ “Valid” means that a license, certification, or other form of authorization is in full force and effect and not suspended.
- ~~30-29.~~ “Working day” means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

R9-25-703. Requirement and Eligibility for a License (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)

- A.** A person shall not operate an air ambulance in this state unless the person has a current and valid air ambulance service license and, except as provided in A.R.S. § 36-2212(C), a current and valid certificate of registration for the air ambulance as required under Article 8 of this Chapter.
- B.** To be eligible to obtain an air ambulance service license, an applicant shall:
1. Hold current and valid ~~Registration~~ registration and ~~Exemption~~ exemption issued by the Federal Aviation Administration under 14 CFR 298, as evidenced by a current and valid U.S. Department of Transportation OST Form 4507 showing the effective date of registration;
 2. Hold the following issued by the Federal Aviation Administration:
 - a. A current and valid Air Carrier Certificate authorizing common carriage under 14 CFR 135;
 - b. If operating a rotor-wing air ambulance, current and valid Operations Specifications authorizing aeromedical helicopter operations;
 - c. If operating a fixed-wing air ambulance, current and valid Operations Specifications authorizing airplane air ambulance operations;
 - d. A current and valid Certificate of Registration for each air ambulance to be operated; and
 - e. A current and valid Airworthiness Certificate for each air ambulance to be operated;
 3. Have applied for a certificate of registration, issued by the Department under Article 8 of this Chapter, for each air ambulance to be operated by the air ambulance service;
 4. ~~Hold~~ Possess a copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4, to the owner of the aircraft for each air ambulance to be operated by the air ambulance service;

5. Have current and valid liability insurance coverage for the air ambulance service that complies with A.R.S. § 36-2215 and that has at least the following maximum liability limits:
 - a. \$1 million for injuries to or death of any one person arising out of any one incident or accident;
 - b. \$3 million for injuries to or death of more than one person in any one incident or accident; and
 - c. \$500,000 for damage to property arising from any one incident or accident;
 6. Have current and valid malpractice insurance coverage for the air ambulance service that complies with A.R.S. § 36-2215 and that has a maximum liability limit of at least \$1 million per occurrence; and
 7. Comply with all applicable requirements of this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1.
- C. To maintain eligibility for an air ambulance service license, ~~an air ambulance service~~ a licensee shall meet the requirements of subsections ~~(B)(1)-(2) and (4)-(7)~~ (B)(1), (2), and (4) through (7) and hold a current and valid certificate of registration, issued by the Department under Article 8 of this Chapter, for each air ambulance operated in Arizona by the air ambulance service.

R9-25-704. Initial Application and Licensing Process (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215)

- A. An applicant for an initial license shall submit an application packet to the Department, ~~in a Department-provided format~~, including:
1. The following information in a Department-provided format:
 - a. The applicant's name; mailing address; e-mail address; fax number, if any; and telephone number;
 - ~~2-b.~~ Each business name to be used for The names of all other business organizations operated by the applicant related to the air ambulance service;
 - ~~3-c.~~ The physical and mailing addresses to be used for the air ambulance service, if different from the applicant's mailing address;
 - ~~4-d.~~ The name, title, address, e-mail address, and telephone number of the applicant's statutory agent or the individual designated by the applicant to accept service of process and subpoenas for the air ambulance service;
 - e. The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant according to R9-25-102;

- ~~5.f.~~ If the applicant is a business organization:
 - ~~a.i.~~ The type of business organization; and
 - ~~b.ii.~~ The ~~following information about~~ name; address; e-mail address; telephone number; and fax number, if any, of the individual who is to serve as the primary contact for information regarding the application;
 - ~~i.~~ Name;
 - ~~ii.~~ Address;
 - ~~iii.~~ E-mail address;
 - ~~iv.~~ Telephone number; and
 - ~~v.~~ Fax number, if any;
 - ~~e.~~ The name, title, and address of each officer and board member or trustee; and
 - ~~d.~~ A copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents, if applicable;
- ~~6.g.~~ The name and Arizona license number for the physician who is to serve as the administrative medical director for the air ambulance service;
- ~~7.h.~~ The intended hours of operation for the air ambulance service;
- ~~8.i.~~ The intended schedule of rates for the air ambulance service;
- ~~9.j.~~ Which of the following mission types is to be provided:
 - ~~a.i.~~ Emergency medical services transports,
 - ~~b.ii.~~ Interfacility transports,
 - ~~c.iii.~~ Interfacility maternal transports, ~~and~~ or
 - ~~d.iv.~~ Interfacility neonatal transports;
- ~~k.~~ Which of the following mission levels is to be provided:
 - ~~i.~~ Critical care, or
 - ~~ii.~~ Advanced life support;
- ~~l.~~ Whether the applicant plans to use fixed-wing or rotor-wing aircraft for the air ambulance service;
- ~~m.~~ Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
- ~~n.~~ Attestation that the applicant will comply with all applicable requirements in this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1;
- ~~o.~~ Attestation that the information provided in the application packet, including the

- information in the accompanying documents, is accurate and complete; and
- ~~10-p.~~ The signature of the applicant and the date signed;
2. Documentation for the individual specified according to subsection (A)(1)(e) that complies with A.R.S. § 41-1080;
3. A copy of the business organization's articles of incorporation, articles of organization, or partnership documents, if applicable;
- ~~11-4.~~ A copy of a current and valid U.S. Department of Transportation OST Form 4507, showing the effective date of Federal Aviation Administration registration and exemption under 14 CFR 298;
- ~~12-5.~~ A copy of the following issued by the Federal Aviation Administration:
- a. A current and valid Air Carrier Certificate authorizing common carriage under 14 CFR 135;
 - b. If intending to operate a rotor-wing air ambulance, the following signed pages of the current and valid Operations Specifications authorizing aeromedical helicopter operations:
 - i. The page showing the certificate number issued by the Federal Aviation Administration and stating the name and contact information for the entity to which the certificate, approving the Operation Specifications authorizing aeromedical helicopter operations, was issued by the Federal Aviation Administration;
 - ii. The page stating the characteristics of the rotor-wing aircraft for which the certificate was issued by the Federal Aviation Administration;
 - iii. Each page stating the name and contact information for the individuals with controlling legal interest or controlling equitable interest in the ownership of the entity specified in subsection (A)(5)(b)(i);
 - iv. Each page stating the name and contact information for the individuals designated to act as a point of contact with the Federal Aviation Administration about the Operation Specifications for the rotor-wing aircraft;
 - v. Each page stating the name and contact information for the individuals with operational control of the rotor-wing aircraft; and
 - vi. Each page listing the tail numbers of the rotor-wing aircraft covered under the Operations Specifications; and

- c. If intending to operate a fixed-wing air ambulance, the following signed pages of the current and valid Operations Specifications authorizing airplane air ambulance operations:
 - i. The page showing the certificate number issued by the Federal Aviation Administration and stating the name and contact information for the entity to which the certificate, approving the Operation Specifications authorizing airplane ambulance operations, was issued by the Federal Aviation Administration;
 - ii. The page stating the characteristics of the fixed-wing aircraft for which the certificate was issued by the Federal Aviation Administration;
 - iii. Each page stating the name and contact information for the individuals with controlling legal interest or controlling equitable interest in the ownership of the entity specified in subsection (A)(5)(c)(i);
 - iv. Each page stating the name and contact information for the individuals designated to act as a point of contact with the Federal Aviation Administration about the Operation Specifications for the fixed-wing aircraft;
 - v. Each page stating the name and contact information for the individuals with operational control of the fixed-wing aircraft; and
 - vi. Each page listing the tail numbers of the fixed-wing aircraft covered under the Operations Specifications;
- ~~d.~~ ~~A current and valid Certificate of Registration for each air ambulance to be operated; and~~
- ~~e.~~ ~~A current and valid Airworthiness Certificate for each air ambulance to be operated;~~
- ~~13-6.~~ For each air ambulance to be operated for the air ambulance service:
 - a. An application for registration that includes all of the information and ~~items~~ documents required under ~~R9-25-802(C)~~ R9-25-801(B); and
 - b. A copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4;
- ~~14-7.~~ A certificate of insurance establishing that the applicant has current and valid liability insurance coverage for the air ambulance service as required under R9-25-703(B)(5);
- ~~15-8.~~ A certificate of insurance establishing that the applicant has current and valid malpractice

insurance coverage for the air ambulance service as required under R9-25-703(B)(6);

9. A list of each entity that or physician who is to provide on-line medical direction to EMCTs of the air ambulance service, including:
 - a. For each entity, such as an ALS base hospital, centralized medical direction communications center, or physician group practice, the name, mailing address, e-mail address, and telephone number of the entity; or
 - b. For each physician who is to provide on-line medical direction, the name, professional license number, mailing address, e-mail address, and telephone number for the physician;
 - ~~16-10.~~ If the applicant holds current CAMTS accreditation for the air ambulance service, a copy of the current CAMTS accreditation report; and
 - ~~17:~~ Attestation that the applicant will comply with all applicable requirements in this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1; and
 - ~~18:~~ Attestation that the information provided in the application, including the information in the documents accompanying the application form, is accurate and complete.
 11. If a document required under subsection (A)(4) or (5) is not issued in the name of the applicant, documentation showing the applicant can legally possess and operate the aircraft covered by the document, signed by the owner of the aircraft.
- B.** No more than 30 days before the expiration date of the current license, a licensee shall submit to the Department a renewal application packet including:
1. The information required in subsection (A)(1), in a Department-provided format;
 2. The documents required in subsections (A)(4), (5), (7), (8), (9), and, if applicable, (10); and
 3. For each air ambulance operated or to be operated by the air ambulance service:
 - a. Either:
 - i. A copy of a current and valid certificate of registration issued by the Department under Article 8 of this Chapter, or
 - ii. An application packet for registration that includes all of the information and documents required under R9-25-801(B); and
 - b. A copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4.
- B.C.** Unless an applicant ~~establishes that it holds~~ or licensee documents current CAMTS accreditation, as provided in subsection ~~(A)(16)~~ (A)(10), or is applying for an initial license because of a change

of ownership as described in ~~R9-25-706(D)~~ R9-25-710(D), the Department shall conduct an inspection, as required under A.R.S. § 36-2214(B) and ~~R9-25-708~~ R9-25-711, during the substantive review period for the application for ~~an initial~~ a license.

~~C.D.~~ The Department shall review ~~and approve or deny~~ each application packet as described in Article 12 of this Chapter, and:

1. Approve the application;
2. Approve the application with a corrective action plan, as specified in R9-25-711(G)(2); or
3. Deny the application.

~~D.E.~~ The Department may deny an application if an applicant or licensee:

1. Fails to meet the eligibility requirements of R9-25-703(B);
2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
3. Fails or has failed to comply with any provision in this Article or Article 2 or 8 of this Chapter;
4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
5. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3); ~~as required under R9-25-1201(D)~~; and requests a denial as permitted under R9-25-1201(E).

~~R9-25-705. Renewal Application and Licensing Process (A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215)~~

- ~~A.~~ ~~Before the expiration date of its current license, an air ambulance service shall submit to the Department a renewal application completed using a Department-provided form and including:~~
- ~~1. The information and items listed in R9-25-704(A)(1)-(11), (12)(b), and (13)-(18); and~~
 - ~~2. For each air ambulance operated or to be operated by the air ambulance service:~~
 - ~~a. A copy of a current and valid certificate of registration issued by the Department under Article 8 of this Chapter; or~~
 - ~~b. An application for registration that includes all of the information and items required under R9-25-802(C).~~
- ~~B.~~ ~~Unless an air ambulance service establishes that it holds current CAMTS accreditation as provided in subsection (C), the Department shall conduct an inspection, as required under A.R.S. § 36-2214(B) and R9-25-708, during the substantive review period for the renewal application.~~
- ~~C.~~ ~~To establish current CAMTS accreditation, an air ambulance service shall submit to the Department, as part of the application submitted under subsection (A), a copy of the air~~

~~ambulance service's current CAMTS accreditation report.~~

~~D. The Department shall review and approve or deny each application as described in Article 12 of this Chapter.~~

~~E. The Department may deny an application if an applicant:~~

- ~~1. Fails to meet the eligibility requirements of R9-25-703(C);~~
- ~~2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;~~
- ~~3. Fails or has failed to comply with any provision in this Article or Article 2 or 8 of this Chapter;~~
- ~~4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or~~
- ~~5. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3), as required under R9-25-1201(D), and requests a denial as permitted under R9-25-1201(E).~~

~~R9-25-710;R9-25-705.~~ Minimum Standards for Operations (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

~~A. An air ambulance service~~ A licensee shall ensure that the air ambulance service:

- ~~1. The air ambulance service maintains~~ Maintains eligibility for licensure as required under R9-25-703(C);
- ~~2. The air ambulance service publicizes~~ Makes a good faith effort to communicate information about its hours of operation to the general public through print media, broadcast media, the Internet, or other means;
- ~~3. The air ambulance service makes its~~ Makes the air ambulance service's schedule of rates available to any individual upon request and, if requested, in writing;
- ~~4. The air ambulance service provides~~ Provides an accurate estimated time of arrival to the person requesting transport at the time that transport is requested and provides an amended estimated time of arrival to the person requesting transport if the estimated time of arrival changes;
- ~~5. The air ambulance service transports~~ Except as provided in subsection (B), only transports patients for whom ~~it~~ the air ambulance service has the resources to provide appropriate medical care, ~~unless subsection (B) or (D) applies;~~
- ~~6. The air ambulance service does~~ Does not perform interfacility transport of a patient unless:
 - a. The transport is ~~requested~~ initiated by the sending health care institution; ~~and~~

- ~~i. A physician; or~~
- ~~ii. A qualified medical person, as determined by the sending health care institution's bylaws or policies, after consultation with and approval by a physician; and~~

b. The destination health care institution confirms that a bed is available for the patient;

7. Ensures that the protocol for the transfer of information to be communicated to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), includes:

- a. The date and time the call requesting service was received by the air ambulance service;
- b. The unique number used by the air ambulance service to identify the mission;
- c. The name of the air ambulance service;
- d. The number or other identifier of the air ambulance used for the mission;
- e. The following information about the patient:
 - i. The patient's name;
 - ii. The patient's date of birth or age, as available;
 - iii. The principal reason for requesting services for the patient;
 - iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;
 - v. The patient's level of consciousness at initial contact and when reassessed;
 - vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;
 - vii. The results of an electrocardiograph, if available;
 - viii. The patient's glucose level at initial contact and when reassessed, if applicable;
 - ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;
 - x. The results of the patient's neurological assessment, if applicable; and
 - xi. The patient's pain level at initial contact and when reassessed; and

- f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient;
- 7.8. ~~The air ambulance service creates~~ Creates a prehospital incident history report, as defined in A.R.S. § 36-2220 in a Department-provided format, for each patient that includes the following information:
- a. The name and identification number of the air ambulance service;
 - b. Information about the software for the storage and submission of the prehospital incident history report;
 - c. The unique number assigned to the mission;
 - d. The unique number assigned to the patient;
 - e. Information about the response to the call requesting service, including:
 - i. The mission level requested;
 - ii. Information obtained by the person providing direction for response to the request;
 - iii. Information about the air ambulance assigned to the mission;
 - iv. Information about the medical team responding to the call requesting service;
 - v. The priority assigned to the response; and
 - vi. Response delays, as applicable;
 - f. Whether patient care was transferred from another EMS provider or ambulance service and, if so, identification of the EMS provider or ambulance service;
 - g. The date and time that:
 - i. The call requesting service was received;
 - ii. The request was received by the person coordinating transport;
 - iii. The air ambulance service received the transport request;
 - iv. The air ambulance left for the patient's location;
 - v. The air ambulance arrived at the patient's location;
 - vi. The medical team in the air ambulance arrived at the patient's side;
 - vii. Transfer of the patient's care occurred at a location other than the destination, if applicable;
 - viii. The air ambulance departed the patient's location;
 - ix. The air ambulance arrived at the destination;
 - x. Transfer of the patient's care occurred at the destination;

- xi. The air ambulance was available to take another mission;
- h. Information about the patient, including:
 - i. The patient's first and last name;
 - ii. The address of the patient's residence;
 - iii. The county of the patient's residence;
 - iv. The country of the patient's residence;
 - v. The patient's gender, race, ethnicity, and age;
 - vi. The patient's estimated weight;
 - vii. The patient's date of birth; and
 - viii. If the patient has an alternate residence, the address of the alternate residence;
- i. The primary method of payment for services and anticipated level of payment;
- j. Information about the scene, including:
 - i. Specific information about the location of the scene;
 - ii. Whether the air ambulance was first on the scene;
 - iii. The number of patients at the scene;
 - iv. Whether the scene was the location of a mass casualty incident; and
 - v. If the scene was the location of a mass casualty incident, triage information;
- k. Information about the reason for requesting service for the patient, including:
 - i. The date and time of onset of symptoms and when the patient was last well;
 - ii. Information about the complaint;
 - iii. The patient's symptoms;
 - iv. The results of the medical team's initial assessment of the patient;
 - v. If the patient was injured, information about the injury and the cause of the injury;
 - vi. If the patient experienced a cardiac arrest, information about the etiology of the cardiac arrest and subsequent treatment provided; and
 - vii. For an interfacility transport, the reason for the transport;
- l. Information about any specific barriers to providing care to the patient;
- m. Information about the patient's medical history, including:
 - i. Known allergies to medications,

- ii. Surgical history.
 - iii. Current medications, and
 - iv. Alcohol or drug use;
 - n. Information about the patient's current medical condition, including the information in subsections (A)(7)(e)(v) through (xi) and the time and method of assessment;
 - o. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;
 - p. If not specifically included under subsection (A)(8)(k), (m)(iv), (n), or (o), the information required in A.A.C. R9-4-602(A);
 - q. Information about any procedures performed on the patient and the patient's response to the procedure;
 - r. Whether the patient was transported and, if so, information about the transport;
 - s. Information about the destination of the transport, including the reason for choosing the destination;
 - t. Whether patient care was transferred to another EMS provider or ambulance service and, if so, identification of the EMS provider or ambulance service;
 - u. Unless patient care was transferred to another EMS provider or ambulance service, information about:
 - i. Whether the destination facility was notified that the patient being transported has a time-sensitive condition and the time of notification;
 - ii. The disposition of the patient at the destination; and
 - iii. The disposition of the mission;
 - v. Any other narrative information about the patient, care receive by the patient, or transport; and
 - w. The name and certification level of the medical team member providing the information;
- 8-9. ~~The air ambulance service creates~~ Creates a record for each mission that includes:
- a. Mission date;
 - b. Mission level—~~basic life support, advanced life support, or critical care;~~
 - c. Mission type—~~emergency medical services transport, interfacility transport, interfacility maternal transport, interfacility neonatal transport, or convalescent~~

~~transport;~~

~~d.~~ Staffing of the mission;

~~d.e.~~ Aircraft type—fixed-wing aircraft or rotor-wing aircraft;

~~e.f.~~ Name of the person requesting the transport;

~~f.g.~~ Time of receipt of the transport request;

~~h.~~ The estimated time of arrival, as provided according to subsection (A)(4);

~~g.i.~~ Departure time to the patient's location;

~~h.j.~~ Address of the patient's location;

~~i.k.~~ Arrival time at the patient's location;

~~j.l.~~ Departure time to the destination health care institution;

~~k.m.~~ Name and address of the destination health care institution;

~~l.n.~~ Arrival time at the destination health care institution;

~~m.o.~~ ~~Patient reference number or call number~~ Either the:

~~i.~~ Unique reference number used by the air ambulance service to identify the patient, or

~~ii.~~ Unique call number used by the air ambulance service to identify the specific mission; and

~~n.p.~~ Aircraft tail number for the air ambulance used on the mission; ~~and~~

~~9.~~ The air ambulance service submits to the Department by the 15th day of each month, either in an electronic format approved by the Department or in hard copy, a run log of the previous month's missions that includes the information required under subsections (A)(8)(a)-(d), (f), (g), (i), (j), (l), and (m) in a cumulative tabular format.

10. Establishes, documents, and, if necessary, implements a plan to address and minimize potential issues of patient health and safety due to the air ambulance service terminating operations at a physical address used for the air ambulance service that:

a. Is developed in conjunction with hospitals near the physical address used for the air ambulance service and other persons who may be adversely affected by the air ambulance service terminating operations;

b. Includes notification by the air ambulance service of the persons in subsection (A)(9)(a) of the intent to terminate operations, at least 30 calendar days before the termination of operations; and

c. Includes temporary measures that will be used until alternate methods may be arranged for patient transport that address patient health and safety;

11. Establishes, documents, and implements a quality improvement program, as specified in policies and procedures, through which:
- a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:
 - i. Collected continuously;
 - ii. For the information required in subsection (A)(8), submitted to the Department, in a Department-provided format and within 48 hours after the date of a mission, for quality improvement purposes; and
 - iii. If the air ambulance service is notified that the submission of information to the Department according to subsection (A)(11)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;
 - b. Continuous quality improvement processes are developed to identify, document, and evaluate issues related to the provision of services, including:
 - i. Care provided to patients with time-sensitive conditions;
 - ii. Transport or documentation, and
 - iii. Patient status upon arrival at the destination;
 - c. A committee consisting of the administrative medical director, the individual managing the air ambulance service or designee, and other employees as appropriate:
 - i. Review the data in subsection (A)(11)(a) and any issues identified in subsection (A)(11)(b) on at least a quarterly basis; and
 - ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified; and
 - d. The activities in subsection (A)(11)(c) are documented, consistent with A.R.S. §§ 36-2401, 36-2402, and 36-2403; and
12. Beginning within 12 months after the effective date of this Section, establish and maintain a method to electronically document patient information and treatment that is capable of being transferred.

B: ~~In a rescue situation, when no other practical means of transport, including another air ambulance service, is available, an air ambulance service may deviate from subsection (A)(5) to the extent necessary to meet the rescue situation.~~

B: An air ambulance service may transport a patient for whom the air ambulance does not have the

resources to provide appropriate medical care:

1. In a rescue situation in which:
 - a. An individual's life, limb, or health is imminently threatened;
 - b. The threat may be reduced or eliminated by removing the individual from the situation to a location in which medical services may be provided; and
 - c. There is no other practical means of transport, including another air ambulance service, available; or
 2. For an interfacility transport of a patient if:
 - a. The sending health care institution provides medically appropriate life support measures, staff, and equipment to sustain the patient during the interfacility transport; and
 - b. Each staff member provided by the sending health care institution has completed training in the subject areas listed in R9-25-707(A) before participating in the interfacility transport.
- C.** ~~An~~ If an air ambulance service that completes a mission under subsection (B) for which the air ambulance service does not have the resources to provide appropriate medical care, the licensee shall ensure that the air ambulance service shall create creates a record within five working days after the mission, including:
- ~~1. the~~ The information required under subsection (A)(8),
 - ~~2. the~~ The manner in which the air ambulance service deviated from subsection (A)(5), and
 - ~~3. the~~ The justification for operating under subsection (B).
- D.** ~~An air ambulance service may provide interfacility transport of a patient for whom it does not have the resources to provide appropriate medical care if the sending health care institution provides medically appropriate life support measures, staff, and equipment to sustain the patient during the interfacility transport.~~
- E.** ~~An air ambulance service shall ensure that each staff member provided by a sending health care institution under subsection (D) has completed training in the subject areas listed in R9-25-713(A) before serving on a mission.~~
- D.** If an air ambulance service uses a single-member medical team as authorized under R9-25-706(B) and (C), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(9),
 2. The name and qualifications of the individual comprising the single-member medical

team, and

3. The justification for using a single-member medical team.

E. If an air ambulance service completes a critical care interfacility transport mission under conditions permitted in R9-25-802(F), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:

1. The information required under subsection (A)(9).
2. A description of the life-support equipment used on the mission.
3. A list of the equipment and supplies required in R9-25-802(C) that were removed from the air ambulance for the mission, and
4. The justification for conducting the mission as permitted under R9-25-802(F).

F. A licensee shall ensure that an individual does not serve on the medical team for an interfacility maternal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(2).

G. A licensee shall ensure that an individual does not serve on the medical team for an interfacility neonatal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(3).

H. A licensee shall ensure that the air ambulance service:

1. Retains each document required to be created or maintained under this Article or Article 2 or 8 of this Chapter for at least three years after the last event recorded in the document, and
2. Produces each document for Department review upon request.

I. A licensee shall ensure that, while on a mission, two-way voice communication is available:

1. Between and among personnel on the air ambulance, including the pilot; and
2. Between personnel on the air ambulance and the following persons on the ground:
 - a. Personnel;
 - b. Physicians providing on-line medical direction or on-line medical guidance to medical team members; and
 - c. For a rotor-wing air ambulance mission:
 - i. Emergency medical services providers, and
 - ii. Law enforcement agencies.

~~R9-25-711~~, R9-25-706. Minimum Standards for Mission Staffing (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

A. ~~An air ambulance service~~ A licensee shall ensure that, except as provided in subsection (B):

1. Each critical care mission is staffed by a medical team of at least two individuals with ~~at least~~ the following qualifications:
 - a. For a critical care interfacility transport mission:
 - ~~i.~~ A physician or registered nurse; and
 - ~~b-ii.~~ A physician, registered nurse, Paramedic, or licensed respiratory care practitioner; and
 - b. For a critical care mission that is an emergency medical services transport:
 - i. A physician or registered nurse, and
 - ii. A Paramedic;
2. Each interfacility maternal transport mission is staffed by a medical team that:
 - a. Complies with the requirements for a critical care mission medical team in subsection (A)(1); and
 - b. Has the following additional qualifications:
 - i. Proficiency in advanced emergency cardiac life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
 - ii. Proficiency in neonatal resuscitation; and
 - iii. Proficiency in stabilization and transport of the pregnant patient;
3. Each interfacility neonatal transport mission is staffed by a medical team that:
 - a. Complies with the requirements for a critical care mission medical team in subsection (A)(1); and
 - b. Has the following additional qualifications:
 - i. Proficiency in pediatric advanced emergency life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association; and
 - ii. Proficiency in neonatal resuscitation and stabilization of the neonatal patient; and
- ~~2-4.~~ Each advanced life support mission is staffed by a medical team of at least two individuals with ~~at least~~ the following qualifications:
 - a. For an advance life support mission that is an emergency medical services transport:
 - i. A physician, registered nurse, or Paramedic; and
 - ii. Another Paramedic; and

each patient's status upon arrival at the destination health care institution, is reviewed through the quality improvement processes in R9-25-705(A)(11)(b) and (c); and

5. A single-member medical team is used only when no other transport team is available that would be more appropriate for delivering the level of care that a patient requires.

~~D.~~ ~~An air ambulance service that uses a single-member medical team as authorized under subsection (B) shall create a record within five working days after the mission, including the information required under R9-25-710(A)(8), the name and qualifications of the individual comprising the single-member medical team, and the justification for using a single-member medical team.~~

~~E.D.~~ A licensee shall ensure that the air ambulance service ~~shall create~~ creates and ~~maintain~~ maintains for each personnel member a file containing documentation of the personnel member's qualifications, including, as applicable, licenses, certifications, and training records.

~~R9-25-713~~R9-25-707. **Minimum Standards for Training (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213)**

A. ~~An air ambulance service~~ A licensee shall ensure that each medical team member completes training in the following subjects before serving on a mission:

1. Aviation terminology;
2. Physiological aspects of flight;
3. Patient loading and unloading;
4. Safety in and around the aircraft;
5. In-flight communications;
6. Use, removal, replacement, and storage of the medical equipment installed on the aircraft;
7. In-flight emergency procedures;
8. Emergency landing procedures; and
9. Emergency evacuation procedures.

B. ~~An air ambulance service~~ A licensee shall ensure that the air ambulance service ~~document~~ documents each medical team member's completion of the training required under subsection (A), including the name of the medical team member, each training component completed, and the date of completion.

~~R9-25-715~~R9-25-708. **Minimum Standards for Medical Control (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)**

A. ~~An air ambulance service~~ A licensee shall ensure that:

1. The air ambulance service has ~~a~~ an administrative medical director who:
 - a. Meets the qualifications in subsection (B);

- b. Supervises and evaluates the quality of medical care provided by medical team members;
 - c. Ensures the competency and current qualifications of all medical team members;
 - d. ~~Ensures that each EMCT medical team member receives medical direction as required under Article 2 of this Chapter;~~
 - e. ~~Ensures that each non-EMCT medical team member receives medical guidance through:~~
 - i. ~~Written treatment protocols; and~~
 - ii. ~~On-line medical guidance provided by:~~
 - (1) ~~The medical director;~~
 - (2) ~~Another physician designated by the medical director; or~~
 - (3) ~~If the medical guidance needed exceeds the medical director's area of expertise, a consulting specialty physician; and~~
 - d. Except as provided in subsections (A)(3) and (4), ensures that:
 - i. Each EMCT medical team member receives medical direction as required under Article 2 of this Chapter; and
 - ii. Each non-EMCT medical team member receives medical guidance through written treatment protocols and according to subsection (C); and
 - f.e. Approves, ensures implementation of, and annually reviews treatment protocols to be followed by medical team members;
2. ~~The air ambulance service has a quality management program through which:~~
- a. ~~Data related to patient care and transport services provided and patient status upon arrival at destination are:~~
 - i. ~~Collected continuously; and~~
 - ii. ~~Examined regularly, on at least a quarterly basis; and~~
 - b. ~~Appropriate corrective action is taken when concerns are identified; and~~
3. ~~The air ambulance service documents each concern identified through the quality management program and the corrective action taken to resolve each concern and provides this information, along with the supporting data, to the Department upon request.~~
2. The administrative medical director reviews data related to patient care and transport services provided, documentation, and patient status upon arrival at destination that are collected through the quality management program in R9-25-705(A)(11);

3. For an interfacility maternal transport mission, on-line medical direction or on-line medical guidance provided to medical team member is provided by a physician who meets the qualifications of subsection (B)(2)(b)(i);
4. For an interfacility neonatal transport mission, on-line medical direction or on-line medical guidance provided to medical team member is provided by a physician who meets the qualifications of subsection (B)(2)(b)(ii);

B. ~~A~~ An administrative medical director shall:

1. Be a physician, ~~as defined in A.R.S. § 36-2201~~; and
2. Comply with one of the following:
 - a. If the air ambulance service provides emergency medical services transports, meet the qualifications of R9-25-201(A)(1); or
 - b. If the air ambulance service does not provide emergency medical services transports, meet the qualifications of R9-25-201(A)(1) or one of the following:
 - i. If the air ambulance service provides ~~only~~ interfacility maternal transport missions, have board certification or have completed an accredited residency program in one of the following specialty areas:
 - (1) Obstetrics and gynecology, with subspecialization in critical care medicine or maternal and fetal medicine; or
 - (2) Pediatrics, with subspecialization in neonatal-perinatal medicine;
 - ii. If the air ambulance service provides ~~only~~ interfacility neonatal transport missions, have board certification or have completed an accredited residency program in one of the following specialty areas:
 - (1) Obstetrics and gynecology, with subspecialization in maternal and fetal medicine; or
 - (2) Pediatrics, with subspecialization in neonatal-perinatal medicine, neonatology, pediatric critical care medicine, or pediatric intensive care; or
 - iii. If neither subsection (B)(2)(b)(i) or (ii) applies, have board certification or have completed an accredited residency program in one of the following specialty areas:
 - (1) Anesthesiology, with subspecialization in critical care medicine;
 - (2) Internal medicine, with subspecialization in critical care medicine;

- (3) If the air ambulance service transports only pediatric patients, pediatrics, with subspecialization in pediatric critical care medicine or pediatric emergency medicine; or
- (4) If the air ambulance service transports only surgical patients, surgery, with subspecialization in surgical critical care.

C. An administrative medical director shall ensure that each non-EMCT medical team member receives on-line medical guidance provided by:

- 1. The administrative medical director;
- 2. Another physician designated by the administrative medical director; or
- 3. If the medical guidance needed exceeds the administrative medical director's area of expertise, a consulting specialty physician.

~~R9-25-707~~R9-25-709. Changes Affecting a License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213)

- A.** At least 30 days before the date of a change in an air ambulance service's name, the ~~air ambulance service~~ licensee shall send the Department written notice of the name change.
- B.** At least 90 days before an air ambulance service ceases to operate, the ~~air ambulance service~~ licensee shall send the Department written notice of the intention to cease operating, effective on a specific date, and the ~~licensee's intention~~ to relinquish its the air ambulance service's license as of that date.
- C.** Within 30 days after the date of receipt of a notice described in subsection (A) or (B), the Department shall:
 - 1. For a notice described in subsection (A), issue an amended license that incorporates the name change but retains the expiration date of the current license; and
 - 2. For a notice described in subsection (B), send the ~~air ambulance service~~ licensee written confirmation of the voluntary relinquishment of ~~its the air ambulance service's~~ license, with an effective date consistent with the written notice.
- D.** A licensee shall notify the Department in writing at least 30 calendar days before:
 - 1. Changing the physical address used for the air ambulance service, as provided according to R9-25-704(A)(1)(c); or
 - 2. Terminating operations at a physical address used for the air ambulance service, as provided according to R9-25-704(A)(1)(c).
- ~~D.E.~~** ~~An air ambulance service~~ A licensee shall notify the Department in writing within one working day after:

1. A change in ~~its~~ the air ambulance service's eligibility for licensure under R9-25-703(B) or (C);
2. A change in the business organization information most recently submitted to the Department ~~under R9-25-704(A)(5) or R9-25-705(A)~~ according to R9-25-704(A)(1)(f);
3. A change in ~~its~~ the air ambulance service's CAMTS accreditation status, including a copy of ~~its~~ the air ambulance service's new CAMTS accreditation report, if applicable;
4. A change in ~~its~~ the air ambulance service's hours of operation, as specified according to R9-25-704(A)(1)(h);
5. A change in the air ambulance service's ~~or~~ schedule of rates, as specified according to R9-25-704(A)(1)(i); or
- ~~5-6.~~ A change in the ~~scope of the~~ mission types provided, as specified according to R9-25-704(A)(1)(j).

~~E. Before the date of an anticipated change of ownership, a person wanting to transfer an air ambulance service license shall submit to the Department the documents required under R9-25-706(D).~~

F. If the Department receives a notice specified in subsection (E)(6), the Department:

1. Shall reissue a license for the air ambulance service reflecting the change, but retaining the expiration date on the original license; and
2. May conduct an inspection according to R9-25-711.

~~R9-25-706;R9-25-710.~~ Term and Transferability of License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, and 41-1092.11)

A. The Department shall issue an initial license:

1. When based on current CAMTS accreditation, with a term beginning on the date of issuance of the initial license and ending on the expiration date of the CAMTS accreditation upon which licensure is based; and
2. When based on Department inspection, with a term beginning on the date of issuance of the initial license and ending three years later.

B. The Department shall issue a renewal license with a term beginning on the day after the expiration date shown on the previous license and ending:

1. When based on current CAMTS accreditation, on the expiration date of the CAMTS accreditation upon which licensure is based; and
2. When based on Department inspection, three years after the effective date of the renewal license.

- C. ~~If an applicant~~ a licensee submits an application packet for renewal as described in ~~R9-25-705~~ R9-25-704(B) ~~before the expiration date of the current license~~, the current license does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.
- D. ~~A person wanting to transfer an air ambulance service license shall submit to the Department~~ At least 30 days before the an anticipated change of ownership:
1. ~~A licensee wanting to transfer an air ambulance service license shall submit a letter to the~~ Department that contains:
 - a. A request that the air ambulance service license be transferred,
 - b. The name and license number of the currently licensed air ambulance service, and
 - c. The name of the person to whom the air ambulance service license is to be transferred; and
 2. ~~An~~ The person to whom the license is to be transferred shall submit to the Department an application packet that complies with R9-25-704(A) completed by the person to whom the license is to be transferred.
- E. A new owner shall not operate an air ambulance in this state until:
1. The new owner complies with requirements in Articles 7 and 8 of this Chapter, and
 2. ~~the~~ The Department has transferred issued an air ambulance service license to the new owner.

~~R9-25-708~~R9-25-711. **Inspections and Investigations (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, and 36-2214)**

- A. Except as provided in subsections (D) and ~~(F)~~ (E), the Department shall inspect an air ambulance service, as required under A.R.S. § 36-2214(B), before issuing an initial or renewal license, ~~as required under A.R.S. § 36-2214(B)~~, and ~~as often~~ as necessary to determine compliance with this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1.
- B. A Department inspection may include the air ambulance service's premises, records, and equipment, and each air ambulance operated or to be operated ~~for~~ by the air ambulance service.
- C. If the Department receives written or verbal information alleging a violation of this Article, Article 2 or 8 of this Chapter, or A.R.S. Title 36, Chapter 21.1, the Department shall conduct an investigation.
1. The Department may conduct an inspection as part of an investigation.
 2. ~~An air ambulance service~~ A licensee shall allow the Department to inspect the air

ambulance service's premises, records, and equipment, and each air ambulance and to interview personnel as part of an investigation.

- D.** ~~As required under A.R.S. § 36-2213(8), the Department shall accept proof of current CAMTS accreditation in lieu of the licensing inspections otherwise required before initial and renewal licensure under subsection (A) and A.R.S. § 36-2214(B).~~
- E.** ~~To establish current CAMTS accreditation, an applicant or air ambulance service shall submit to the Department a copy of its current CAMTS accreditation report as required under R9-25-704(C), R9-25-705(C), or R9-25-707(D).~~
- D.** Except as provided in subsection (C), the Department shall not conduct an inspection of an air ambulance service before issuing an initial or renewal license if an applicant or licensee provides documentation of current CAMTS certification as part of the application packet according to R9-25-704(A)(9).
- F.E.** When an application for an air ambulance service license is submitted along with a transfer request due to a change of ownership, the Department shall determine whether an inspection is necessary based upon the potential impact to public health, safety, and welfare.
- G.F.** The Department shall conduct each inspection in compliance with A.R.S. § 41-1009.
- G.** If the Department determines that an air ambulance service is not in compliance with the requirements in this Article, Article 2 or 8 of this Chapter, or A.R.S. Title 36, Chapter 21.1, the Department may:
1. Take an enforcement action as described in R9-25-712; or
 2. Require that the air ambulance service submit to the Department, within 15 days after written notice from the Department, a corrective action plan to address issues of compliance that do not directly affect the health or safety of a patient that:
 - a. Describes how each identified instance of non-compliance will be corrected and reoccurrence prevented, and
 - b. Includes a date for correcting each instance of non-compliance that is appropriate to the actions necessary to correct the instance of non-compliance.

R9-25-712: Expired

~~R9-25-709~~R9-25-712. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, 36-2215, 41-1092.03, and 41-1092.11(B))

- A.** The Department may take an action listed in subsection (B) against an air ambulance service that:
1. Fails to meet the eligibility requirements of R9-25-703(B) ~~or (C)~~;
 2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;

3. Fails or has failed to comply with any provision in this Article or Article 2 or 8 of this Chapter;
4. Does not submit a corrective action plan, as provided in R9-25-711(G)(2), that is acceptable to the Department;
5. Does not complete a corrective action plan submitted according to R9-25-711(G)(2); or
- 4.6. Knowingly or negligently provides false documentation or false or misleading information to the Department or to a patient, third-party payor, or other person billed for service.

B. The Department may take the following actions against an air ambulance service:

1. Except as provided in subsection (B)(3), after notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, suspend:
 - a. ~~the~~ The air ambulance service license, or
 - b. The certificate of registration of an air ambulance operated by the air ambulance service;
2. After notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, revoke:
 - a. ~~the~~ The air ambulance service license, or
 - b. The certificate of registration of an air ambulance operated by the air ambulance service; and
3. As permitted under A.R.S. § 41-1092.11(B), ~~if~~ if the Department determines that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in ~~its~~ the Department's order, ~~summarily~~ immediately suspend:
 - a. ~~the~~ The air ambulance service license pending proceedings for revocation or other action, as permitted under A.R.S. § 41-1092.11(B), or
 - b. The certificate of registration of an air ambulance operated by the air ambulance service pending proceedings for revocation or other action.

C. In determining whether to take action under subsection (B), the Department shall consider:

1. The severity of each violation relative to public health and safety;
2. The number of violations relative to the transport volume of the air ambulance service;
3. The nature and circumstances of each violation;
4. Whether each violation was corrected and, if so, the manner of correction; and
5. The duration of each violation.

R9-25-713. Renumbered

R9-25-714. ~~Minimum Standards for Communications (A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213) Repealed~~

~~An air ambulance service shall ensure that, while on a mission, two-way voice communication is available:~~

- ~~1. Between and among personnel on the air ambulance, including the pilot; and~~
- ~~2. Between personnel on the air ambulance and the following persons on the ground:~~
 - ~~a. Personnel;~~
 - ~~b. Physicians providing on-line medical direction or on-line medical guidance to medical team members; and~~
 - ~~c. For a rotor-wing air ambulance mission:~~
 - ~~i. Emergency medical services providers; and~~
 - ~~ii. Law enforcement agencies.~~

R9-25-715. Renumbered

R9-25-716. ~~Minimum Standards for Recordkeeping (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213) Repealed~~

~~An air ambulance service shall retain each document required to be created or maintained under this Article or Article 2 or 8 of this Chapter for at least three years after the last event recorded in the document and shall produce each document for Department review upon request.~~

R9-25-717. ~~Minimum Standards for an Interfacility Neonatal Mission (A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213) Repealed~~

~~An air ambulance service shall ensure that:~~

- ~~1. Each interfacility neonatal mission is staffed by a medical team that complies with the requirements for a critical care mission medical team in R9-25-711(A)(1) and that has the following additional qualifications:~~
 - ~~a. Proficiency in pediatric emergency care, as defined in R9-25-101; and~~
 - ~~b. Proficiency in neonatal resuscitation and stabilization of the neonatal patient;~~
- ~~2. Each interfacility neonatal mission is conducted using an air ambulance that has the equipment and supplies required for a critical care mission in Table 1 of Article 8 of this Chapter and the following:~~
 - ~~a. A transport incubator with:~~
 - ~~i. Battery and inverter capabilities;~~
 - ~~ii. An infant safety restraint system; and~~
 - ~~iii. An integrated neonatal-capable pressure ventilator with oxygen-air~~

supply and blender;

- b. ~~An invasive automatic blood pressure monitor;~~
 - e. ~~A neonatal monitor or monitors with heart rate, respiratory rate, temperature, non-invasive blood pressure, and pulse oximetry capabilities;~~
 - d. ~~Neonatal-specific drug concentrations and doses;~~
 - e. ~~Umbilical catheter insertion equipment and supplies;~~
 - f. ~~Thoracostomy supplies;~~
 - g. ~~Neonatal resuscitation equipment and supplies;~~
 - h. ~~A neonatal size cuff (size 2, 3, or 4) for use with an automatic blood pressure monitor; and~~
 - i. ~~A neonatal probe for use with a pulse oximeter;~~
- 3. ~~On-line medical direction or on-line medical guidance provided to an interfacility neonatal mission medical team member is provided by a physician who meets the qualifications of R9-25-715(B)(2)(b)(ii); and~~
 - 4. ~~An individual does not serve on an interfacility neonatal mission medical team unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in subsections (1)(a) and (b).~~

R9-25-718. ~~Minimum Standards for an Interfacility Maternal Mission (A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213) Repealed~~

- A.** ~~This Section applies to an air ambulance service that holds itself out as providing interfacility maternal missions.~~
- B.** ~~An air ambulance service shall ensure that:~~
 - 1. ~~Each interfacility maternal mission is staffed by a medical team that complies with the requirements for a critical care mission medical team in R9-25-711(A)(1) and that has the following additional qualifications:~~
 - a. ~~Proficiency in advanced emergency cardiac life support, as defined in R9-25-101;~~
 - b. ~~Proficiency in neonatal resuscitation; and~~
 - e. ~~Proficiency in stabilization and transport of the maternal patient;~~
 - 2. ~~Each interfacility maternal mission is conducted using an air ambulance that has the equipment and supplies required for a critical care mission in Table 1 of Article 8 of this Chapter and the following:~~
 - a. ~~A Doppler fetal heart monitor;~~
 - b. ~~Unless use is not indicated for the patient as determined through on-line medical~~

- ~~direction or on-line medical guidance provided as described in subsection (B)(3);~~
- ~~an external fetal heart and tocographic monitor with printer capability;~~
- e. ~~Tocolytic and anti-hypertensive medications;~~
- d. ~~Advanced emergency cardiac life support equipment and supplies; and~~
- e. ~~Neonatal resuscitation equipment and supplies;~~
- 3. ~~On-line medical direction or on-line medical guidance provided to an interfacility maternal mission medical team member is provided by a physician who meets the qualifications of R9-25-715(B)(2)(b)(i); and~~
- 4. ~~An individual does not serve on an interfacility maternal mission medical team unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in subsections (B)(1)(a), (b), and (c).~~

ARTICLE 8. AIR AMBULANCE REGISTRATION

~~R9-25-801. Definitions (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2212)~~

In addition to the definitions in R9-25-701, the following definitions apply in this Article, unless otherwise specified:

1. ~~“Certificate holder” means a person who holds a current and valid certificate of registration for an air ambulance.~~
2. ~~“Drug” has the same meaning as in A.R.S. § 32-1901.~~

~~R9-25-802.~~R9-25-801. Requirement, Eligibility, and Application for an Initial or Renewal Certificate of Registration for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, 36-2232(A)(11), and 36-2240(4))

~~A.~~ A person shall not operate an air ambulance in this state unless the person has a current and valid air ambulance service license as required under Article 7 of this Chapter and, except as provided in A.R.S. § 36-2212(C), a current and valid certificate of registration for the air ambulance as required under this Article.

~~B.A.~~ To be eligible to obtain a certificate of registration for an air ambulance, an applicant shall:

1. Hold a current and valid air ambulance service license issued under Article 7 of this Chapter;
2. Hold the following issued by the Federal Aviation Administration for the air ambulance:
 - a. A current and valid Certificate of Registration, and
 - b. A current and valid Airworthiness Certificate;
3. ~~Hold~~ Possess a copy of a current and valid registration for the air ambulance, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4, to the owner of the aircraft; and
4. Comply with all applicable requirements of this Article, Articles 2 and 7 of this Chapter, and A.R.S. Title 36, Chapter 21.1.

~~C.B.~~ ~~To obtain an initial or renewal certificate of registration for an air ambulance, an~~ An applicant for an initial or renewal certificate of registration for an air ambulance shall submit an application packet to the Department, an application completed using a Department-provided form and including:

1. The following information in a Department-provided format:
 - a. The applicant’s name; mailing address; e-mail address; fax number, if any; and

- telephone number;
- ~~2.b.~~ All other business names used The names of all other business organizations operated by the applicant related to the use of an air ambulance;
- ~~3.c.~~ The applicant's physical business address of the applicant, if different from the mailing address;
- ~~d.~~ If applicable, the number of the applicant's air ambulance service license;
- ~~e.~~ The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant according to R9-25-102;
- ~~f.~~ The name, address, telephone number, and e-mail address of the owner of the air ambulance, if different from the applicant;
4. ~~The following information about the air ambulance for which registration is sought:~~
- ~~a:~~ ~~Each mission level for which the air ambulance will be used:~~
- ~~i.~~ ~~Basic life support;~~
- ~~ii.~~ ~~Advanced life support; or~~
- ~~iii.~~ ~~Critical care;~~
- ~~b.g.~~ ~~Whether the air ambulance is a fixed-wing or rotor-wing aircraft;~~
- ~~e.h.~~ ~~Number~~ The number of engines on the air ambulance;
- ~~d.i.~~ ~~Manufacturer~~ The manufacturer's name;
- ~~e.j.~~ ~~Model~~ The model name of the air ambulance;
- ~~f.k.~~ ~~Year~~ The year the air ambulance was manufactured;
- ~~g.l.~~ ~~Serial~~ The serial number of the air ambulance;
- ~~h.m.~~ ~~Aircraft~~ The tail number of the air ambulance;
- ~~i.n.~~ ~~Aircraft~~ The aircraft colors, including fuselage, stripe, and lettering; and
- ~~j.o.~~ A description of any insignia, monogram, or other distinguishing characteristics of the aircraft's appearance;
5. ~~A copy of the following issued to the applicant, for the air ambulance, by the Federal Aviation Administration:~~
- ~~a:~~ ~~A current and valid Certificate of Registration, and~~
- ~~b:~~ ~~A current and valid Airworthiness Certificate;~~
6. ~~A copy of a current and valid registration issued to the applicant, for the air ambulance, by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4;~~
- ~~p.~~ The address at which the air ambulance is usually based;

- ~~7-g.~~ The ~~location~~ address in Arizona at which the air ambulance will be available for inspection;
- ~~8-r.~~ The name and telephone number of the individual to contact to arrange for inspection, if the inspection is preannounced;
- ~~s.~~ Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
- 9. ~~Attestation that the applicant knows all applicable requirements in A.R.S. Title 36, Chapter 21.1; this Article; and Articles 2 and 7 of this Chapter;~~
- ~~10-t.~~ Attestation that the information provided in the application packet, including the information in the accompanying documents ~~accompanying the application form~~, is accurate and complete; and
- ~~11-u.~~ The dated signature of the applicant:
 - ~~a.~~ ~~If the applicant is an individual, the individual;~~
 - ~~b.~~ ~~If the applicant is a corporation, an officer of the corporation;~~
 - ~~c.~~ ~~If the applicant is a partnership, one of the partners;~~
 - ~~d.~~ ~~If the applicant is a limited liability company, a manager or, if the limited liability company does not have a manager, a member of the limited liability company;~~
 - ~~e.~~ ~~If the applicant is an association or cooperative, a member of the governing board of the association or cooperative;~~
 - ~~f.~~ ~~If the applicant is a joint venture, one of the individuals signing the joint venture agreement;~~
 - ~~g.~~ ~~If the applicant is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing by that individual;~~ and
 - ~~h.~~ ~~If the applicant is a business organization type other than those described in subsections (C)(11)(b) through (f), an individual who is a member of the business organization;~~
- 2. A copy of the following for the air ambulance, issued by the Federal Aviation Administration:
 - a. A current and valid Certificate of Registration, and
 - b. A current and valid Airworthiness Certificate;
- 3. A copy of a current and valid registration for the air ambulance, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4;

4. If a document required under subsection (B)(2) or (3) is not issued in the name of the applicant, documentation showing the applicant can legally possess and operate the aircraft covered by the document, signed by the owner of the aircraft; and
- ~~12-5.~~ Unless the applicant operates or intends to operate the air ambulance only as a volunteer not-for-profit service, ~~a certified check, business check, or money order made payable to the Arizona Department of Health Services~~ for the following fees:
- a. A \$50 registration fee, as required under A.R.S. § 36-2212(D); and
 - b. A \$200 annual regulatory fee, as required under A.R.S. § 36-2240(4).
- ~~D.C.~~ The Department requires submission of a separate application and the fees in subsection (B)(5) for each air ambulance.
- ~~E.D.~~ Except as provided ~~under R9-25-805(C) in A.R.S. § 36-2232(A)(11)~~, the Department shall inspect each air ambulance according to R9-25-805(A) and (B) to determine compliance with the provisions of A.R.S. Title 36, Chapter 21.1 and this Article:
1. before Within 30 calendar days before issuing an initial certificate of registration; and
 2. at At least every 12 months thereafter, before issuing a renewal certificate of registration.
- ~~F.E.~~ The Department shall review and approve or deny each application as described in Article 12 of this Chapter.
- F. If the Department approves the application and sends the applicant the written notice of approval, specified in R9-25-1201(C)(5), the Department shall issue the certificate of registration to the applicant:
1. For an applicant with a current and valid air ambulance service license issued under Article 7 of this Chapter, within five working days after the date on the written notice of approval; and
 2. For an applicant that does not have a current and valid air ambulance service license issued under Article 7 of this Chapter, when the air ambulance service license is issued.
- G. The Department may deny a certificate of registration for an air ambulance if the applicant:
1. Fails to meet the eligibility requirements of ~~R9-25-802(B)~~ subsection (A);
 2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
 3. Fails or has failed to comply with any provision in this Article or Article 2 or 7 of this Chapter;
 4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
 5. Fails to submit to the Department documents or information requested under

R9-25-1201(B)(1) or (C)(3), ~~as required under R9-25-1201(D)~~, and requests a denial as permitted under R9-25-1201(E).

~~R9-25-807~~**R9-25-802. Minimum Standards for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(3), (4), and (5); 36-2209(A)(2); and 36-2212)**

- A. An applicant or certificate holder shall ensure that an air ambulance has:
1. A climate control system to prevent temperature extremes that would adversely affect patient care;
 2. If a fixed-wing air ambulance, pressurization capability;
 3. Interior lighting that allows for patient care and monitoring without interfering with the pilot's vision;
 4. For each place where a patient may be positioned, at least one electrical power outlet or other power source that is capable of operating all electrically powered medical equipment without compromising the operation of any electrical aircraft equipment;
 5. A back-up source of electrical power or batteries capable of operating all electrically powered life-support equipment for at least one hour;
 6. An entry that allows for patient loading and unloading without rotating a patient and stretcher more than 30 degrees about the longitudinal axis or 45 degrees about the lateral axis and without compromising the operation of monitoring systems, intravenous lines, or manual or mechanical ventilation;
 7. A configuration that allows each medical team member sufficient access to each patient to begin and maintain treatment modalities, including complete access to the patient's head and upper body for effective airway management;
 8. A configuration that allows for rapid exit of personnel and patients, without obstruction from stretchers and medical equipment;
 9. A configuration that protects the aircraft's flight controls, throttles, and communications equipment from any intentional or accidental interference from a patient or equipment and supplies;
 10. A padded interior or an interior that is clear of objects or projections in the head strike envelope;
 11. An installed self-activating emergency locator transmitter;
 12. A voice communications system that:
 - a. Is capable of air-to-ground communication, and

- b. Allows the flight crew and medical team members to communicate with each other during flight;
 - 13. Interior patient compartment wall and floor coverings that are:
 - a. Free of cuts or tears,
 - b. Made from non-absorbent material.
 - ~~b.c.~~ Capable of being disinfected, and
 - ~~e.d.~~ Maintained in a sanitary manner; and
 - 14. If a rotor-wing air ambulance, the following:
 - a. A searchlight that:
 - i. Has a range of motion of at least 90 degrees vertically and 180 degrees horizontally,
 - ii. Is capable of illuminating a landing site, and
 - iii. Is located so that the pilot can operate the searchlight without removing the pilot's hands from the aircraft's flight controls;
 - b. Restraining devices that can be used to prevent a patient from interfering with the pilot or the aircraft's flight controls; and
 - c. A light to illuminate the tail rotor.
- B.** An applicant or certificate holder shall ensure that:
- 1. Except as provided in ~~subsection (C)~~ subsections (D), (E), and (F), each air ambulance has the equipment and supplies required in ~~Table 1~~ subsection (C) for each mission level for which the air ambulance is used; and
 - 2. The equipment and supplies on an air ambulance are secured, stored, and maintained in a manner that prevents hazards to personnel and patients.
- C.** An applicant or certificate holder shall ensure that an air ambulance used for an advanced life support mission or critical care mission has the following equipment and supplies:
- 1. The following ventilation and airway equipment and supplies:
 - a. Portable and fixed suction apparatus, with wide-bore tubing, rigid pharyngeal curved suction tip, tonsillar and flexible suction catheters, 5F-14F;
 - b. Portable and fixed oxygen equipment, with variable flow regulators;
 - c. Oxygen administration equipment, including: tubing; non-rebreathing masks (adult and pediatric sizes); and nasal cannulas (adult and pediatric sizes);
 - d. Bag-valve mask, with hand-operated, self-reexpanding bag (adult size), with oxygen reservoir/accumulator; mask (adult, pediatric, infant, and neonate sizes);

and valve:

- e. Airways, oropharyngeal (adult, pediatric, and infant sizes):
- f. Laryngoscope handle, adult and pediatric, with, if applicable, extra batteries and bulbs:
- g. Laryngoscope blades, sizes 0, 1, and 2, straight; sizes 3 and 4, straight and curved:
- h. Endotracheal tube cuff pressure manometer:
- i. Endotracheal tubes, sizes 2.5-5.0 mm cuffed or uncuffed and 6.0-8.0 mm cuffed:
- j. Stylettes for Endotracheal tubes, adult and pediatric:
- k. Airways, nasal (adult, pediatric, and infant sizes), one each in French sizes 16 to 34:
- l. One type of supraglottic airway device, adult and pediatric:
- m. 10 mL straight-tip syringes:
- n. Small volume nebulizer(s) and aerosol masks, adult and pediatric:
- o. Magill forceps, adult and pediatric:
- p. Nasogastric tubes, sizes 5F and 8F, Salem sump sizes 14F and 18F:
- q. End-tidal CO2 detectors, quantitative:
- r. Portable automatic ventilator with positive end expiratory pressure; and
- s. In-line viral/bacterial filter:

2. The following monitoring and defibrillation equipment and supplies:

- a. Portable, battery-operated monitor/defibrillator, with:
 - i. Tape write-out/recorder,
 - ii. Defibrillator pads,
 - iii. Adult and pediatric paddles or hands-free patches,
 - iv. ECG leads,
 - v. Adult and pediatric chest attachment electrodes, and
 - vii. Capability to provide electrical discharge below 25 watt-seconds; and
- b. Transcutaneous cardiac pacemaker, either stand-alone unit or integrated into monitor/defibrillator:

3. For rotor wing aircraft only, the following immobilization devices and supplies:

- a. Cervical collars, rigid, adjustable or in an assortment of adult and pediatric sizes:
- b. Head immobilization device, either firm padding or another commercial device:
- c. Lower extremity (femur) traction device, including lower extremity, limb support

- slings, padded ankle hitch, padded pelvic support, and traction strap; and
- d. Upper and lower extremity immobilization splints;
4. The following bandages:
- a. Burn pack, including standard package, clean burn sheets;
- b. Dressings, including:
- i. Sterile multi-trauma dressings (various large and small sizes);
- ii. Abdominal pads, 10" x 12" or larger; and
- iii. 4" x 4" gauze sponges;
- c. Gauze rolls, sterile (4" or larger);
- d. Elastic bandages, non-sterile (4" or larger);
- e. Occlusive dressing, sterile, 3" x 8" or larger; and
- f. Adhesive or self-adhesive tape, including various sizes (1" or larger)
hypoallergenic and various sizes (1" or larger) adhesive or self-adhesive;
5. The following obstetrical equipment and supplies:
- a. Separate sterile obstetrical kit, including:
- i. Towels,
- ii. 4" x 4" dressing,
- iii. Umbilical tape,
- iv. Sterile scissors or other cutting utensil,
- v. Bulb suction,
- vi. Clamps for cord,
- vii. Sterile gloves,
- viii. Blankets, and
- ix. A head cover; and
- b. An alternate portable patient heat source or two heat packs;
6. The following infection control equipment and supplies, including the availability of latex-free:
- a. Eye protection (full peripheral glasses or goggles, face shield);
- b. Masks, at least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator, which are fit-tested;
- c. Gloves, non-sterile;
- d. Jumpsuits or gowns;
- e. Shoe covers;

- f. Disinfectant hand wash, commercial antimicrobial (towelette, spray, or liquid);
 - g. Disinfectant solution for cleaning equipment;
 - h. Standard sharps containers;
 - i. Disposable red trash bags; and
 - j. Protective facemasks or cloth face coverings for patients;
7. The following injury prevention equipment:
- a. Appropriate restraints, such as seat belts or, if applicable, child safety restraints, for patient, personnel, and family members;
 - b. For rotor wing aircraft only, safety vest or other garment with reflective material for each personnel member;
 - c. Fire extinguisher, either disposable with an indicator of a full charge or with a current inspection tag;
 - d. Hazardous material reference guide; and
 - e. Hearing protection for patient and personnel;
8. The following vascular access equipment and supplies:
- a. Intravenous administration equipment, with fluid in bags;
 - b. Antiseptic solution (alcohol wipes and povidone-iodine wipes);
 - c. Intravenous pole or roof hook;
 - d. Intravenous catheters 14G-24G;
 - e. Intraosseous needles, adult and pediatric sizes;
 - f. Venous tourniquet;
 - g. One of each of the following types of intravenous solution administration sets:
 - i. A set with blood tubing.
 - ii. A set capable of delivering 60 drops per cc, and
 - iii. A set capable of delivering 10 or 15 drops per cc;
 - h. Intravenous arm boards, adult and pediatric;
 - i. IV pump or pumps (minimum of 3 infusion lines); and
 - j. IV pressure bag;
9. The agents, specified in a table of agents established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references, that an administrative medical director has authorized for use, based on the EMCT classification of the medical team; and
10. The following miscellaneous equipment and supplies:

- a. Sphygmomanometer (infant, pediatric, and adult regular and large sizes);
- b. Stethoscope;
- c. Pediatric equipment sizing reference guide;
- d. Thermometer with low temperature capability;
- e. Heavy bandage or paramedic scissors for cutting clothing, belts, and boots;
- f. Cold packs;
- g. Flashlight (1) with extra batteries or recharger, as applicable;
- h. Blankets;
- i. Sheets;
- j. Disposable emesis bags or basins;
- k. For fixed wing aircraft only, a disposable bedpan;
- l. For fixed wing aircraft only, a disposable urinal;
- m. Properly secured patient transport system;
- n. Lubricating jelly (water soluble);
- o. Glucometer or blood glucose measuring device with reagent strips;
- p. Pulse oximeter with pediatric and adult probes;
- q. Automatic blood pressure monitor; and
- r. A commercially available trauma arterial tourniquet.

D. An applicant or certificate holder shall ensure that an air ambulance used for an interfacility maternal transport mission has:

- 1. The equipment and supplies in subsection (C); and
- 2. The following:
 - a. A Doppler fetal heart monitor;
 - b. Unless use is not indicated for the patient as determined through on-line medical direction or on-line medical guidance provided as described in R9-25-708(A)(3), an external fetal heart and tocographic monitor with printer capability;
 - c. Tocolytic and anti-hypertensive medications;
 - d. Advanced emergency cardiac life support equipment and supplies; and
 - e. Neonatal resuscitation equipment and supplies.

E. An applicant or certificate holder shall ensure that an air ambulance used for an interfacility neonatal transport mission has:

- 1. The equipment and supplies in subsection (C); and
- 2. The following:

- a. A transport incubator with:
 - i. Battery and inverter capabilities,
 - ii. An infant safety restraint system, and
 - iii. An integrated neonatal-capable pressure ventilator with oxygen-air supply and blender;
- b. An invasive automatic blood pressure monitor;
- c. A neonatal monitor or monitors with heart rate, respiratory rate, temperature, non-invasive blood pressure, and pulse oximetry capabilities;
- d. Neonatal-specific drug concentrations and doses;
- e. Thoracostomy supplies;
- f. Neonatal resuscitation equipment and supplies;
- g. A neonatal size cuff (size 2, 3, or 4) for use with an automatic blood pressure monitor; and
- h. A neonatal probe for use with a pulse oximeter.

C.F. A certificate holder may conduct ~~an interfacility~~ a critical care interfacility transport mission using an air ambulance that does not have all of the equipment and supplies required in ~~Table 1~~ for the mission level subsection (C) if:

1. Care of the patient to be transported necessitates use of life-support equipment that, because of its size or weight or both, makes it unsafe or impossible for the air ambulance to carry all of the equipment and supplies required in ~~Table 1~~ for the mission level subsection (C), as determined by the certificate holder based upon:
 - a. The individual aircraft's capabilities,
 - b. The size and weight of the equipment and supplies required in ~~Table 1~~ subsection (C) and of the additional life-support equipment,
 - c. The composition of the required medical team, and
 - d. Environmental factors such as density altitude;
2. The certificate holder ensures that, during the mission, the air ambulance has the equipment and supplies necessary to provide an appropriate level of medical care for the patient and to protect the health and safety of the personnel on the mission; and
3. ~~The certificate holder ensures that, during the mission, the air ambulance is not directed by the air ambulance service or another person to conduct another mission before returning to a base location;~~
- 4.3. The certificate holder ensures that the air ambulance is not used for another mission until

the air ambulance has all of the equipment and supplies required in ~~Table 1 for the mission level subsection (C);~~ and

5. ~~Within five working days after each interfacility critical care mission conducted as permitted under subsection (C), the certificate holder creates a record that includes the information required under R9-25-710(A)(8), a description of the life support equipment used on the mission, a list of the equipment and supplies required in Table 1 that were removed from the air ambulance for the mission, and the justification for conducting the mission as permitted under subsection (C).~~

~~R9-25-804.~~R9-25-803. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), and 36-2212)

- A. At least 30 days before the date of a change in a certificate holder's name, the certificate holder shall send the Department written notice of the name change.
- B. No later than 10 days after a certificate holder ceases to operate an air ambulance, the certificate holder shall send the Department written notice of the date that the certificate holder ceased to operate the air ambulance and of the ~~desire~~ certificate holder's intention to relinquish the certificate of registration for the air ambulance as of that date.
- C. Within 30 days after the date of receipt of a notice described in subsection (A) or (B), the Department shall:
 1. For a notice described in subsection (A), issue an amended certificate of registration that incorporates the name change but retains the expiration date of the current certificate of registration; and
 2. For a notice described in subsection (B);
 - a. Void the certificate of registration for the air ambulance; and
 - b. ~~send~~ Send the certificate holder written confirmation of the voluntary relinquishment of the certificate of registration, with an effective date that corresponds to the written notice.
- D. A certificate holder shall notify the Department in writing within one working day after a change in ~~its~~ the certificate holder's eligibility to ~~obtain~~ hold a certificate of registration for an air ambulance under ~~R9-25-802(B)~~ R9-25-801(A).
- E. Upon receiving a notification required in subsection (D), the Department:
 1. Shall revoke the certificate for the air ambulance; and
 2. If the air ambulance is the only air ambulance operated by an air ambulance service, may revoke the license of the air ambulance service.

~~R9-25-803.~~R9-25-804. Term and Transferability of Certificate of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)

- A. The Department shall issue an initial certificate of registration:
 - 1. With a term of one year from date of issuance of the initial certificate of registration; or
 - 2. If requested by the applicant, with a term shorter than one year that allows for the Department to conduct annual inspections of all of the applicant's air ambulances at one time.
- B. The Department shall issue a renewal certificate of registration with a term of one year from the expiration date on the previous certificate of registration.
- C. If ~~an applicant~~ a certificate holder submits an application for renewal as described in ~~R9-25-802~~ R9-25-801 before the expiration date of the current certificate of registration, the current certificate of registration does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.
- D. A certificate of registration is not transferable from one person to another.
- E. If there is a change in the ownership of an air ambulance or the person who can legally possess and operate the air ambulance, the new owner or person who can legally possess and operate the air ambulance shall apply for and obtain a new certificate of registration before operating the air ambulance in this state.

R9-25-805. Inspections (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 36-2232(A)(11))

- A. ~~An~~ Except as provided in R9-25-711(C), an applicant or a certificate holder shall make an air ambulance available for inspection within Arizona ~~at the~~ within 10 working days after a request ~~of by~~ the Department.
- B. The Department shall conduct each inspection in compliance with A.R.S. § 41-1009.
- C. As permitted under A.R.S. § 36-2232(A)(11), upon a certificate ~~holder~~ holder's request and at the certificate ~~holder~~ holder's expense, the annual inspection of an air ambulance required for renewal of a certificate of registration may be conducted by a Department-approved inspection facility.

R9-25-806. Enforcement Actions (A.R.S. §§ ~~36-2202(A)(4), 36-2209(A)(2), 36-2212, 36-2234(L), 41-1092.03, and 41-1092.11(B)~~) Repealed

- ~~A.~~ The Department may take ~~an action listed in subsection (B)~~ against a certificate holder's certificate of registration if the certificate holder:
 - ~~1.~~ Fails or has failed to meet the eligibility requirements of R9-25-802(B);

2. ~~Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;~~
3. ~~Fails or has failed to comply with any provision in this Article or Article 2 or 7 of this Chapter; or~~
4. ~~Knowingly or negligently provides false documentation or false or misleading information to the Department.~~

B. ~~The Department may take the following actions against a certificate holder's certificate of registration:~~

1. ~~After notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, revoke the certificate of registration; and~~
2. ~~In case of emergency, if the Department determines that a potential threat to the public health and safety exists and incorporates a finding to that effect in its order, immediately suspend the certificate of registration as authorized under A.R.S. § 36-2234(L).~~

C. ~~In determining whether to take action under subsection (B), the Department shall consider:~~

1. ~~The severity of each violation relative to public health and safety;~~
2. ~~The number of violations relative to the transport volume of the air ambulance service;~~
3. ~~The nature and circumstances of each violation;~~
4. ~~Whether each violation was corrected and, if so, the manner of correction; and~~
5. ~~The duration of each violation.~~

R9-25-807. **Renumbered**

Table 8.1. Minimum Equipment and Supplies Required on Air Ambulances, By Mission Level and Aircraft Type (Authorized by A.R.S. §§ 36-2202(A)(3), (4), and (5); 36-2209(A)(2); and 36-2212) Repealed

X = Required
 ALS = Advanced Life Support Mission
 BLS = Basic Life Support Mission
 CC = Critical Care Mission
 FW = Fixed-Wing Aircraft
 RW = Rotor-Wing Aircraft

MINIMUM EQUIPMENT AND SUPPLIES	FW	RW	BLS	ALS	CC
A: Ventilation and Airway Equipment					
1. Portable and fixed suction apparatus, with wide-bore tubing, rigid pharyngeal curved suction tip, tonsillar and flexible suction catheters, 5F-14F	X	X	X	X	X
2. Portable and fixed oxygen equipment, with variable flow regulators	X	X	X	X	X
3. Oxygen administration equipment, including tubing; non-rebreathing masks (adult and pediatric sizes); and nasal cannulas (adult and pediatric sizes)	X	X	X	X	X
4. Bag-valve-mask, with hand-operated, self-reexpanding bag (adult size), with oxygen reservoir/accumulator; mask (adult, pediatric, infant, and neonate sizes); and valve	X	X	X	X	X
5. Airways, oropharyngeal (adult, pediatric, and infant sizes)	X	X	X	X	X
6. Laryngoscope handle with extra batteries and bulbs, adult and pediatric	X	X	-	X	X
7. Laryngoscope blades, sizes 0, 1, and 2, straight; sizes 3 and 4, straight and curved	X	X	-	X	X
8. Endotracheal tubes, sizes 2.5-5.0 mm cuffed or uncuffed and 6.0-8.0 mm cuffed	X	X	-	X	X
9. Meconium aspirator	X	X	-	X	X
10. 10 mL straight tip syringes	X	X	-	X	X
11. Stylettes for Endotracheal tubes, adult and pediatric	X	X	-	X	X
12. Magill forceps, adult and pediatric	X	X	-	X	X
13. Nasogastric tubes, sizes 5F and 8F, Salem sump sizes 14F and 18F	X	X	-	X	X
14. End-tidal CO ₂ detectors, colorimetric or quantitative	X	X	-	X	X
15. Portable automatic ventilator with positive end expiratory pressure	X	X	-	X	X

B: Monitoring and Defibrillation					
1. Automatic external defibrillator	✗	✗	✗	-	-
2. Portable, battery-operated monitor/defibrillator, with tape write-out/recorder, defibrillator pads, adult and pediatric paddles or hands-free patches, ECG leads, adult and pediatric chest attachment electrodes, and capability to provide electrical discharge below 25 watt-seconds	✗	✗	-	✗	✗
3. Transcutaneous cardiac pacemaker, either stand-alone unit or integrated into monitor/defibrillator	✗	✗	-	✗	✗
C: Immobilization Devices					
1. Cervical collars, rigid, adjustable or in an assortment of adult and pediatric sizes	-	✗	✗	✗	✗
2. Head immobilization device, either firm padding or another commercial device	-	✗	✗	✗	✗
3. Lower extremity (femur) traction device, including lower extremity, limb support slings, padded ankle hitch, padded pelvic support, and traction strap	-	✗	✗	✗	✗
4. Upper and lower extremity immobilization splints	-	✗	✗	✗	✗
D: Bandages					
1. Burn pack, including standard package, clean burn sheets	✗	✗	✗	✗	✗
2. Dressings, including sterile multi-trauma dressings (various large and small sizes); abdominal pads, 10" x 12" or larger; and 4" x 4" gauze sponges	✗	✗	✗	✗	✗
3. Gauze rolls, sterile (4" or larger)	✗	✗	✗	✗	✗
4. Elastic bandages, non-sterile (4" or larger)	✗	✗	✗	✗	✗
5. Occlusive dressing, sterile, 3" x 8" or larger	✗	✗	✗	✗	✗
6. Adhesive tape, including various sizes (1" or larger) hypoallergenic and various sizes (1" or larger) adhesive	✗	✗	✗	✗	✗
E: Obstetrical					
1. Obstetrical kit (separate sterile kit), including towels, 4" x 4" dressing, umbilical tape, sterile scissors or other cutting utensil, bulb suction, clamps for cord, sterile gloves, at least 4 blankets, and a head cover	✗	✗	✗	✗	✗
2. An alternate portable patient heat source or 2 heat packs	✗	✗	✗	✗	✗
F: Miscellaneous					
1. Sphygmomanometer (infant, pediatric, and adult regular and large sizes)	✗	✗	✗	✗	✗
2. Stethoscope	✗	✗	✗	✗	✗

3. Pediatric equipment sizing reference guide	X	X	X	X	X
4. Thermometer with low temperature capability	X	X	X	X	X
5. Heavy bandage or paramedic scissors for cutting clothing, belts, and boots	X	X	X	X	X
6. Cold packs	X	X	X	X	X
7. Flashlight (1) with extra batteries	X	X	X	X	X
8. Blankets	X	X	X	X	X
9. Sheets	X	X	X	X	X
10. Disposable emesis bags or basins	X	X	X	X	X
11. Disposable bedpan	X	X	X	X	X
12. Disposable urinal	X	X	X	X	X
13. Properly secured patient transport system	X	X	X	X	X
14. Lubricating jelly (water soluble)	X	X	X	X	X
15. Small volume nebulizer	X	X	-	X	X
16. Glucometer or blood glucose measuring device with reagent strips	X	X	X	X	X
17. Pulse oximeter with pediatric and adult probes	X	X	X	X	X
18. Automatic blood pressure monitor	X	X	X	X	X
G. Infection Control (Latex-free equipment shall be available)					
1. Eye protection (full peripheral glasses or goggles, face shield)	X	X	X	X	X
2. Masks	X	X	X	X	X
3. Gloves, non-sterile	X	X	X	X	X
4. Jumpsuits or gowns	X	X	X	X	X
5. Shoe covers	X	X	X	X	X
6. Disinfectant hand wash, commercial antimicrobial (towelette, spray, or liquid)	X	X	X	X	X
7. Disinfectant solution for cleaning equipment	X	X	X	X	X
8. Standard sharps containers	X	X	X	X	X
9. Disposable red trash bags	X	X	X	X	X
10. High-efficiency particulate air mask	X	X	X	X	X
H. Injury Prevention Equipment					

1. Appropriate restraints (such as seat belts) for patient, personnel, and family members	✗	✗	✗	✗	✗
2. Child safety restraints	✗	✗	✗	✗	✗
3. Safety vest or other garment with reflective material for each personnel member	▪	✗	✗	✗	✗
4. Fire extinguisher	✗	✗	✗	✗	✗
5. Hazardous material reference guide	✗	✗	✗	✗	✗
6. Hearing protection for patient and personnel	✗	✗	✗	✗	✗
I. Vascular Access					
1. Intravenous administration equipment, with fluid in bags	✗	✗	-	✗	✗
2. Antiseptic solution (alcohol wipes and povidone-iodine wipes)	✗	✗	▪	✗	✗
3. Intravenous pole or roof hook	✗	✗	-	✗	✗
4. Intravenous catheters 14G-24G	✗	✗	▪	✗	✗
5. Intraosseous needles	✗	✗	▪	✗	✗
6. Venous tourniquet	✗	✗	-	✗	✗
7. One of each of the following types of intravenous solution administration sets: a. A set with blood tubing, b. A set capable of delivering 60 drops per cc, and c. A set capable of delivering 10 or 15 drops per cc	✗	✗	-	✗	✗
8. Intravenous arm boards, adult and pediatric	✗	✗	▪	✗	✗
9. IV pump or pumps (minimum of 3 infusion lines)	✗	✗	-	✗	✗
10. IV pressure bag	✗	✗	-	✗	✗
J. Medications					
1. Agents required in a table of agents, established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/cms-regulatory-references , that an administrative medical director may authorize based on the EMCT classification	✗	✗	✗	✗	✗

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

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

- A.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department is listed in Table 12.1. The applicant and the Director may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department is listed in Table 12.1. The administrative completeness review time-frame begins on the date that the Department receives an application form or an application packet.
1. If the application packet is incomplete, the Department shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the written request until the date the Department receives a complete application packet from the applicant.
 2. When an application packet is complete, the Department shall send a written notice of administrative completeness.
 3. If the Department grants an approval during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 is listed in Table 12.1 and begins on the postmark date of the notice of administrative completeness.
1. As part of the substantive review time-frame for an application for an approval other than renewal of an ambulance registration, the Department shall conduct inspections, conduct investigations, or hold hearings required by law.
 2. If required under R9-25-402, the Department shall fix the period and terms of probation as part of the substantive review.
 3. During the substantive review time-frame, the Department may make one comprehensive written request for additional documents or information and may make supplemental requests for additional information with the applicant's written consent.

4. The substantive review time-frame and the overall time-frame are suspended from the postmark date of the written request for additional information or documents until the Department receives the additional information or documents.
 5. The Department shall send a written notice of approval to an applicant who:
 - a. ~~meets~~ Meets the qualifications in A.R.S. Title 36, Chapter 21.1 and this Chapter for the type of application submitted; or
 - b. Is not in compliance with requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter, for the type of application submitted, that do not directly affect the health or safety of a patient and submits to the Department a corrective action plan that is acceptable to the Department to address issues of compliance.
 6. The Department shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. Title 36, Chapter 21.1, and this Chapter for the type of application submitted.
- D.** If an applicant fails to supply the documents or information under subsections (B)(1) and (C)(3) within the number of days specified in Table 12.1 from the postmark date of the written notice or comprehensive written request, the Department shall consider the application withdrawn.
- E.** An applicant that does not wish an application to be considered withdrawn may request a denial in writing within the number of days specified in Table 12.1 from the postmark date of the written notice or comprehensive written request for documents or information under subsections (B)(1) and (C)(3).
- F.** If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Department shall consider the next business day as the time-frame's last day.

Table 12.1. Time-frames (in days)

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

	36-2214, and 36-2215					
Renewal of an Air Ambulance Service License (R9-25-705 <u>R9-25-704</u>)	A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215	90	30	60	60	60
Initial Certificate of Registration for an Air Ambulance (R9-25-802 <u>R9-25-801</u>)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Renewal of a Certificate of Registration for an Air Ambulance (R9-25-802 <u>R9-25-801</u>)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Initial Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2204, 36-2232, 36-2233, 36-2240	450	30	60	420	60
Provision of ALS Services (R9-25-902)	A.R.S. §§ 36-2232, 36-2233, 36-2240	450	30	60	420	60
Transfer of a Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2236(A) and (B), 36-2240	450	30	60	420	60
Renewal of a Certificate of Necessity (R9-25-904)	A.R.S. §§ 36-2233, 36-2235, 36-2240	90	30	60	60	60
Amendment of a Certificate of Necessity (R9-25-905)	A.R.S. §§ 36-2232(A)(4), 36-2240	450	30	60	420	60

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



ARIZONA DEPARTMENT
OF HEALTH SERVICES

TITLE 9. HEALTH SERVICES

CHAPTER 25. EMERGENCY MEDICAL SERVICES

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

ARTICLE 8. AIR AMBULANCE REGISTRATION

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

October 2021

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 25. EMERGENCY MEDICAL SERVICES

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

ARTICLE 8. AIR AMBULANCE REGISTRATION

ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. § 36-2202(A)(5) requires the Department to adopt “reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance,” including air ambulances. A.R.S. § 36-2212 prohibits a person from operating an ambulance in Arizona unless the ambulance has a certificate of registration and complies with A.R.S. Title 36, Chapter 21.1, Article 1 and the rules, standards, and criteria adopted pursuant to the Article. A.R.S. §§ 36-2213 through 36-2215 provide specific authority for the regulation of air ambulance services. The Department has implemented these statutes for air ambulance services in Arizona Administrative Code (A.A.C.) Title 9, Chapter 25, Articles 7 and 8.

The rules in 9 A.A.C. 25, Article 7 and 8, establish requirements for licensing air ambulance services and for registration of air ambulances, respectively, to ensure the health and safety of patients being transported. In a five-year-review report approved by the Governor’s Regulatory Review Council on July 6, 2017, the Department identified several issues with the rules in Articles 7 and 8 and proposed a rulemaking to address these issues. These issues include non-compliance with A.R.S. § 41-1080, unnecessary or duplicative requirements, unclear requirements, obsolete requirements, and poor organization of the rules. All of these issues may affect the effectiveness of the rules and, thus, threaten the health and safety of patients being transported. The Department also requested input from stakeholders to identify additional issues. The Department is revising the rules in 9 A.A.C. 25, Articles 7 and 8, to address these issues and other issues identified by stakeholders as part of the rulemaking process and to restructure the rules to improve clarity, remove duplication, and increase effectiveness. To correct

cross-references to renumbered Sections in Articles 7 and 8 and to clarify requirements related to allowing corrective action plans, the Department is also making changes in Article 12.

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

- The Department
- Air ambulance services, ground ambulance services, and other EMS providers
- Emergency medical care technicians (EMCTs)
- Hospitals and other health care institutions
- Patients and their families
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by statutes. No new FTEs will be required due to this rulemaking. Annual costs/revenues changes are designated as minimal when more than \$0 and \$2,000 or less, moderate when between \$2,000 and \$20,000, and substantial when \$20,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the paragraphs following the Table.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies and Federal or Tribal Health Care Institutions			
Department	Having rules that are clearer and easier to understand Clarifying existing requirements Revising application requirements Receiving more accurate, complete, and useful data to enable the Department to assess the emergency medical services system in Arizona Allowing for use of corrective action plans in lieu of other enforcement actions	None None None None-to-minimal None-to-minimal	Significant Minimal Significant Significant Minimal-to-moderate

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Adding requirements related to an air ambulance service terminating operations at a specific location	None-to minimal	Significant
Federal or tribal hospitals	Clarifying existing requirements Specifying the content of the protocol for communicating information during a transfer of care	None None	Significant Significant
	Adding requirements related to an air ambulance service terminating operations at a specific location	None	Significant
B. Privately Owned Businesses			
Air ambulance services	Having rules to follow that are clearer and easier to understand and follow Clarifying existing requirements Revising application requirements Removing duplicative, unnecessary, or unenforceable requirements Allowing for the use of leased aircraft Adding/clarifying requirements for documentation Specifying the content of the protocol for communicating information during a transfer of care Adding requirements related to an air ambulance service terminating operations at a specific location Allowing for use of corrective action plans in lieu of other enforcement actions Changing requirements for supplies and equipment to current standards Changing language for agent requirements so air ambulances only have to carry agents from the Department's list that are authorized for use by the administrative medical director	None None-to-moderate None-to-minimal None None None-to-moderate None-to-moderate None-to-moderate None-to-moderate None-to-substantial None-to-moderate None	Significant Significant Significant Significant None-to-substantial None-to-moderate None-to-moderate None-to-moderate None-to-moderate None-to-substantial None-to-moderate None-to-moderate
Other ambulance services or EMS providers	Clarifying existing requirements Specifying the content of the protocol for communicating information during a transfer of care	None None	Significant Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
Hospitals and other health care institutions	Clarifying existing requirements Specifying the content of the protocol for communicating information during a transfer of care Adding requirements related to an air ambulance service terminating operations at a specific location	None None None	Significant Significant Significant
EMCTs	Adding/clarifying requirements for documentation Changing requirements for supplies and equipment to current standards Changing language for agent requirements so air ambulances only have to carry agents from the Department's list that are authorized for use by the administrative medical director	Significant None None	Significant Significant Significant
C. Consumers			
Patients and their families	Having rules that include updated requirements and are clearer and easier to understand	None	Significant
General public	Having rules to follow that are clearer and easier to understand	None	Significant

- **The Department**

The rules in 9 A.A.C. 25, Articles 7 and 8 were adopted by final rulemaking, effective April 8, 2006. Since then, the only rules that have been revised are the current R9-25-701, R9-25-704, R9-25-711, R9-25-715, and Table 8.1, which were revised by exempt rulemaking in 2013 to address statutory changes. Under the rules in 9 A.A.C. 25, Article 7, the Department licenses 19 entities as air ambulance services. As of July 2021, together these entities operate 131 air ambulances registered under Article 8 of the Chapter. Those entities licensed under Article 7 are called licensees, while the entities to which air ambulances are registered are termed certificate holders.

As part of this rulemaking, the Department is establishing rules that are clearer and easier to understand. The revised rules also address issues that had been identified in the 2017 five-year-review report for the rules in 9 A.A.C. 25, as well as issues identified by stakeholders during a survey in anticipation of the rulemaking conducted by the Department in 2019 or as part of informal rulemaking to develop proposed rules. In the new rules, eight definitions are being removed, most of these because the term is no longer being used or is being defined/described where it is being used, consistent with the 2017 five-year-review report. The Department is also adding definitions for seven terms, to define terms that had been used but were undefined in the current rules, and revising two others to clarify what the terms mean as used in the new rules. Language throughout the rest of Articles 7 and 8 is also being updated and revised to improve clarity and understandability, and several Sections are being repealed or renumbered to eliminate duplication and improve the organization of the rules, requiring correction of cross-references, including those in Article 12 of the Chapter.

In addition, many requirements currently in the rules are being clarified to reflect current practice. These include the clarification of: the Department's response to a change in eligibility for a certificate of registration; the term of registration and the time period within which the Department will inspect an air ambulance; requirements for inspections of air ambulance services with CAMTS accreditation and those without, including what may be inspected and by when an applicant or a certificate holder is required to make an air ambulance available for inspection; requirements for establishing, documenting, and implementing a quality improvement program currently in R9-25-711(C)(4) and R9-25-715(A)(2); who is required to apply for and obtain a new certificate of registration when there is a change in ownership or of lawful possession of an aircraft being used as an air ambulance; and when the Department will issue a certificate of registration after approving an application. The new rules also clarify a licensee's responsibilities. The Department anticipates that these clarifying changes may provide a significant benefit to the Department by increasing the understanding by a

regulated entity or an applicant of the requirements, leading to fewer misunderstandings and the need to explain current requirements to ensure compliance. This may decrease the amount of time that staff spend providing technical assistance and answering questions about the rules, providing a minimal decrease in costs.

The Department currently receives and processes approximately two initial applications per year and 18 renewal applications during a three-year period for an air ambulance service license under Article 7. In 2020, the Department received 55 initial applications and 88 renewal applications for an air ambulance registration under Article 8. The new rules contain changes to the applications in R9-25-704, now containing requirements for both initial and renewal applications, and in the new R9-25-801 (old R9-25-802). These changes reflect current requirements and include removing duplicate requirements for document submission now in both Articles 7 and 8; adding statutory requirements in A.R.S. § 41-1080 for demonstrating lawful presence in the country; moving into R9-25-704 requirements for providing information about mission levels, now part of the application for an air ambulance registration; replacing a list of the primary contact and each officer and board member of an applying entity with a cross-reference to R9-25-102; and requiring e-mail addresses. For registration of an air ambulance, the application also includes requirements for providing the air ambulance service's license number for renewals and the location at which the aircraft is usually based. In addition, the new rules account for the fact that an applicant for an air ambulance license or a licensee may lease an aircraft, rather than buying it outright. Since this is a common practice in the industry, making these changes allows the Department to enforce the rule as written. The new rules also clarify and set a time limit within which an air ambulance service must make the air ambulance available for inspection, rather than stating "at the request of the Department." The Department expects these changes to provide a significant benefit to the Department in processing an application.

While R9-25-710(A)(7) in the current rules require an air ambulance service to create a prehospital incident history report, the content of that report is unspecified. The content of the report is clarified in R9-25-705(A)(8) in the new rules, making it consistent with the information currently being reported into the AZ-PIERS system by approximately 50% of air ambulance services. These reporting air ambulance services include all of the larger volume air ambulance services, with approximately 83% of all transports already being reported to AZ-PIERS. This change will provide the Department with more accurate, complete, and useful data to enable the Department to assess the emergency medical services system in Arizona. The Department anticipates that the change may cause the Department to spend more time with staff of air ambulance services not currently submitting data to AZ-PIERS and to assess submitted data for accuracy and completeness, incurring

as much a minimal increase in cost. However, having this data may provide a significant benefit to the Department.

If an air ambulance service is not compliant with requirements in A.R.S. Title 36, Chapter 21.1 or applicable rules in 9 A.A.C. 25, the Department may take enforcement action against the air ambulance service. The types of enforcement actions are specified in the current R9-25-709 and R9-25-806. Because a licensee is ultimately responsible for noncompliance related to an air ambulance registered under the license as part of the air ambulance service, the new rules consolidate the content of both rules into the new R9-25-712, specifying the enforcement actions that the Department may take. The Department prefers to work with a regulated entity to achieve compliance, rather than immediately taking action to suspend or revoke a license, as long as patient health and safety are not compromised. The Department may allow the regulated entity to submit a corrective action plan, describing the actions the regulated entity will take to come back into compliance and the time line for the completion of these actions, in lieu of suspension/revocation action. Because the new rules allow an air ambulance service to submit a corrective action plan to address issues of compliance that do not directly affect the health or safety of a patient, the new R9-25-712 includes provisions for when an air ambulance service either chooses not to submit a corrective action plan according to R9-25-711(G) that is acceptable to the Department or does not complete such a corrective action plan. The Department believes that these changes may cause the Department to incur as much as a minimal increase in costs to review submitted corrective action plans, but may also cause a minimal-to-moderate decrease in costs related to enforcement.

In the last few years, there have been several instances in which an air ambulance service abruptly stopped transporting patients to or from a hospital. This caused these hospitals and the Department to scramble to ensure patient safety. At the request of stakeholders, the new rules add requirements related to an air ambulance service terminating operations at a specific location. The Department anticipates this change may provide a significant benefit to the Department, while causing a most a minimal increase in costs to work with such an air ambulance service and hospital.

- **Air ambulance services**

As stated above, the Department licenses 19 entities as air ambulance services under the rules in 9 A.A.C. 25, Article 7. Of the 131 air ambulances operated by these licensees and registered under Article 8, as of July 2021, 51 are fixed-wing aircraft and the remainder are rotor-wing aircraft. As of July 2021, 10 air ambulance services operate only fixed-wing air ambulances and four only rotor-wing air ambulances. The remaining operate both fixed-wing and rotor-wing aircraft. Ten held

CAMTS accreditation. The number of aircraft operated by an air ambulance service varies greatly, with two operating 31 and 29 aircraft, respectively, while 10 operate five or fewer aircraft.

Many of the clarifying changes described above related to definitions, updated language, inspections, and registrations, are also expected to provide a significant benefit to air ambulance services and applicants through their making the rules more understandable and easier to follow. Additional changes that clarify existing requirements may also provide a benefit to stakeholders. These include making clearer the staffing for critical care missions and advanced life support missions; requirements for medical direction/medical guidance for medical team members, some moved from the current R9-25-717 or R9-25-718; and the structure of the rules. For example, requirements have been moved into R9-25-705 for verifying qualifications of medical team members for interfacility maternal or neonatal transports from the current R9-25-718 and R9-25-717, respectively; for recordkeeping from the current R9-25-716; for communication equipment from the current R9-25-714; and for creation of records that include documentation of the justification for removing unnecessary equipment from current R9-25-807. In addition, staffing requirements for interfacility maternal transport missions and interfacility neonatal transport missions have been moved into R9-25-706 from the current R9-25-718 and R9-25-717, respectively. The Department anticipates that these changes may provide a significant benefit to air ambulance services and applicants. If an air ambulance service has not been complying with these current requirements due to misunderstanding the requirement, the Department believes their clarification could cause an air ambulance service to incur as much as moderate costs to come into compliance.

Revisions to application requirements, reflecting how the Department is currently enforcing the requirements, may also affect air ambulance services. As described above, requirements for both initial and renewal applications are now in a single rule, and duplicate requirements for document submission, now listed in both Articles 7 and 8, have been removed, which may provide a significant benefit to air ambulance services. A list of the primary contact and each officer and board member of an applying entity has been replaced with a cross-reference to R9-25-102. Complying with statutory requirements for demonstrating lawful presence in the country may impose a minimal cost on an applicant, but these costs are due to the statute rather than the rules. Other changes that may cause an applicant to incur minimal costs are the addition of e-mail addresses and, for Article 8, the requirements for providing the air ambulance service's license number for renewals and the location at which the aircraft is usually based. The new rules also clarify how far in advance (at least 30 days before the anticipated change of ownership) an application for transfer of a license is required to be submitted to the Department. The Department has received no requests for transfer in the past five

years but wants to retain these requirements because they are statutorily possible. This time period is consistent with the time-frame in Table 12.1 for the determination of administrative completeness for an initial air ambulance service license application and would help ensure adequate time for the Department to begin processing the application, providing a significant benefit to the entity to which the license is being transferred, despite the possibility of causing a minimal burden on the applicant.

One of the changes that may be most beneficial to an applicant under the new rules accounts for the fact that an applicant for an air ambulance license or a licensee may lease an aircraft, rather than buying it outright. As of July 2021, there were at least ten air ambulance services that use leased aircraft, and a total of at least 33 registered air ambulances are leased. Since this is a common practice in the industry, the new rules, instead, contain requirements for an applicant to provide information about the owner of the aircraft if not the applicant and show lawful possession of aircraft if required documentation about the aircraft is not in the name of the applicant. The new rules also add the ability of an applicant to use electronic payment to pay for registration. The Department expects these changes to provide as much as a substantial benefit to an applicant.

The new rules consolidate requirements related to the operation of an air ambulance service into one Section, the new R9-25-705, allowing many short rules to be repealed. In this rule are included exceptions to equipment and staffing requirements, some moved from other Sections. These exceptions require the creation of records that include documentation of the justification for using the exception. Requirements for establishing, documenting, and implementing a quality improvement program, now in the current R9-25-711(C)(4) and R9-25-715(A)(2), are also included in this rule. The rules also add or clarify other requirements for documentation, stating what information the currently required prehospital incident history report is required to contain, and including a requirement for an air ambulance service to document staffing of a mission and the estimated time of arrival to ensure compliance with current requirements. Requirements for the content of the protocol for communicating information during a transfer of care are also specified, as are requirements related to an air ambulance service terminating operations at a specific location. The new rules also remove duplicative, unnecessary, or unenforceable requirements, such as an unenforceable requirement for an air ambulance service to check on the qualification of an individual in a health care institution requesting transport and an unnecessary requirement for an air ambulance, conducting an interfacility critical care mission with only the supplies and equipment necessary for a patient being transported, to return to its base location before being dispatched on another mission. The Department anticipates that these changes may cause an air ambulance service to incur as much as moderate costs to come into compliance, if not already performing these activities as a standard of care. The Department

believes that some of these changes may also provide up to a moderate benefit to an air ambulance service.

As mentioned above, the Department has included in the new R9-25-711 provisions for an air ambulance service to submit a corrective action plan, describing the actions the air ambulance service will take to come back into compliance and the time line for the completion of these actions, in lieu of suspension/revocation action. The new R9-25-712 includes provisions for when an air ambulance service that is not in compliance with requirements either chooses not to submit a corrective action plan that is acceptable to the Department or does not complete such a corrective action plan. While the preparation and implementation of a corrective action plan may cause an air ambulance service that wishes to use this alternative to other enforcement actions to incur up to substantial costs, the Department believes that the inclusion of provisions for submission of a corrective action plan may provide as much as a substantial benefit to an air ambulance service.

In 2020, air ambulance services carried out over 21,000 transport missions, of which 14% were as a result of a 9-1-1 call and 86% were interfacility transports. The largest two air ambulance services provided over 5,300 transport missions each. Another two provided approximately 3,300 each, while nine provided fewer than 50 transport missions during the year. No air ambulance service provides transport missions at only the basic life support mission level, so requirements related to this mission level are being removed as unnecessary. There are also very few differences in requirements for minimum equipment and supplies for fixed-wing versus rotor-wing aircraft. Table 8.1 is very confusing, convoluting requirements for type of aircraft with requirements based on mission level. In the new rules, the Table is being repealed, and the requirements currently in the Table are clarified and included in the new R9-25-802(C).

Requirements for supplies and equipment are also being changed to reflect the current standards of care. The new rules add requirements for nasal airways (\$35), supraglottic airway devices (\$25 - \$50 each), endotracheal tube cuff pressure manometers (\$350 each), in-line viral/bacterial filters (\$4 each), and trauma arterial tourniquets. Requirements for meconium aspirators (\$8 each), automatic external defibrillators (\$2,000), and bedpans (\$2 each) and disposable urinals (\$2 each) for rotor wing aircraft are being removed. The new rules allow the use of self-adhesive tape and rechargeable flashlights, and clarify the types of required masks (N-95 or better for ambulance attendants and face coverings for patients – rather than unspecified masks and HEPA masks), both of which should already be in use. The language related to agent requirements is also being changed so an air ambulance is only required to carry agents from the Department's list that are authorized for use by the administrative medical director. The Department believes that these changes may provide as much

as a moderate benefit to an air ambulance service, depending on the number of aircraft used by the air ambulance service, the number of missions performed, and list of agents the administrative medical director has authorized for use, while potentially causing the air ambulance service to incur as much as moderate costs.

- **Other ambulance services or EMS providers**

Although this information is not currently collected by the Department, the Department believes that there are many instances in which an air ambulance service either receives a patient for transport from a ground ambulance service or other EMS provider or transfers care of a patient to a ground ambulance service or other EMS provider after completing a transport mission. As mentioned above, the new rules make existing requirements easier to understand and, thus, to comply with. Their clarity also makes it easier for another ambulance service or EMS provider involved in a transfer of care with an air ambulance service to know what to expect from the air ambulance service. Therefore, the Department believes that clarifications of existing requirements for air ambulance services may provide a significant benefit to another ambulance service or EMS provider involved in a transfer of care with an air ambulance service.

The new rules also specify the content of the protocol for communicating information during a transfer of care required in R9-25-201(E)(2)(d)(i). Having information about a patient and the treatment provided to the patient available to EMCTs of the other ambulance service or EMS provider upon transfer of care of the patient to the ambulance service or EMS provider makes it possible for the EMCTs of the ambulance service or EMS provider to provide better care to the patient upon assuming responsibility for the care. The Department anticipates that adding these requirements to the rules to clarify an existing requirement in Article 2 of the Chapter may provide a significant benefit to another ambulance service or EMS provider.

- **Hospitals and other health care institutions, including federal or tribal hospitals**

Hospitals and other health care institutions also receive patients transported by an air ambulance service or use an air ambulance service to transport patients to a facility providing a more appropriate level of care. Rule changes clarifying existing requirements would also be expected to provide a significant benefit to a hospital or other health care institution involved in a transfer of care with an air ambulance service. As for other ambulance services or EMS providers, adding requirements for the content of the protocol for communicating information during a transfer of care would also be expected to provide a significant benefit to a hospital or other health care institution involved in a transfer of care.

In the past few years, there have been several instances in which an air ambulance service decided

to terminating operations at a specific location, with little or no notice to hospitals or other health care institutions that relied on them for patient transports. In the new R9-25-705(A)(10), the rules require an air ambulance service to establish, document, and, if necessary, implement a plan to address and minimize potential issues of patient health and safety due to the air ambulance service terminating operations at a physical address used for the air ambulance service. The Department anticipates that adding these requirements to the rules may provide a significant benefit to a hospital or other health care institution.

- **EMCTs**

The Department believes that clarifications of existing requirements for air ambulance services may provide a significant benefit to EMCTs employed by an air ambulance service by better explaining requirements. For an EMCT not currently complying with new or clarified requirements for documentation, the Department believes that these changes may impose a significant burden on an EMCT, but allow the EMCT to provide better patient care. Changing requirements for supplies and equipment to current standards may also provide an EMCT with a significant benefit. The change to the language for agent requirements, so air ambulances only have to carry agents from the Department's list that are authorized for use by the administrative medical director, may prove especially beneficial in that an EMCT would no longer be responsible for inventorying and being responsible for agents that the EMCT does not use.

- **Patients and their families**

In the past 10 years, the number of transports using air ambulances for trauma cases has decreased, mainly due to decreases in Maricopa and Pima Counties, while the rate of use in rural counties has been fairly stable, declining to a much lesser degree. In 2017, the rate of transport for trauma cases in Maricopa and Pima Counties was 13 and 11 per 100,000 residents, respectively, while the rates were highest in Navajo County (342/100,000 residents), La Paz (361/100,000 residents), and Gila County (735/100,000 residents). In 2020, a total of over 21,000 transport missions were performed by air ambulance services in Arizona. Each of these transport missions represent a seriously ill or injured patient. These patients and their families benefit from the oversight provided by the Department over air ambulance services. Having rules that include updated requirements and are clearer and easier to understand enable the Department to provide better oversight and air ambulance services to better understand and comply with the rules, as well as provide better services to patients. The Department anticipates that these factors improve the health and safety of patients and, thus, proved a significant benefit to patients and their families.

- **General public**

Any individual in Arizona may receive services that fall under the requirements in these rules. The Department anticipates that the general public will receive a significant benefit from the changes to the rules, which were developed to clarify existing requirements, make the rules more understandable, and ensure that the rules are consistent with the current standard of care. Having rules to follow that are clearer and easier to understand may allow air ambulance services to more easily comply with requirements and help ensure the health and safety of Arizona citizens.

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

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rules may include small hospitals and small air ambulance services.

b. The administrative and other costs required for compliance with the rules

Anticipated costs for complying with the rules are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

Including requirements that specifically allow for leased aircraft may provide a particular benefit to small air ambulance services that do not have the funds or generate sufficient revenue to justify buying aircraft.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs to private persons and consumers from the rules changes are described in paragraph 3.

6. A statement of the probable effect on state revenues

The rulemaking does not include any fee changes, so the Department does not expect the rules to affect state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. **A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data**

Not applicable

Statutory Authority for the Rules in 9 A.A.C. 25, Articles 7 and 8

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.

36-2202. Duties of the director; qualifications of medical director

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.
2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.
3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.
4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.
5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.
6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.
2. Successfully completing an emergency medical technician challenge course approved by the department.
3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant

holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.
2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons according to the

most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2209. Powers and duties of the director

A. The director shall:

1. Appoint and define the duties and prescribe the terms of employment of all employees of the bureau.
2. Adopt rules necessary for the operation of the bureau and for carrying out the purposes of this chapter.
3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by these facilities and institutions in the event of a major disaster.
4. Cooperate with the state director of emergency management when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services system.
2. Enter into contracts and agreements with any local governmental entity, agency, facility or group that provides a similar program of emergency medical services in a contiguous state.

3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools, supplies, materials and services necessary in the administration of this chapter.
4. Enter into contracts with emergency receiving facilities, governmental entities, emergency rescue services and ambulance services, and the director may establish emergency medical services, including emergency receiving facilities, if necessary to assure the availability and quality of these services.
5. Accept and expend federal funds and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These funds do not revert to the state general fund at the close of a fiscal year.
6. Establish an emergency medical services notification system that uses existing telephone communications networks.
7. Contract with private telephone companies for the establishment of a statewide emergency reporting telephone number.
8. Authorize the testing entity to collect fees determined by the director. In determining fees for testing entities the director shall consider the fees required by national certification organizations.

36-2212. Certificate of registration to operate an ambulance; termination on change in ownership; fees; exemption

- A. A person shall not operate an ambulance in this state unless the ambulance has a certificate of registration and complies with this article and the rules, standards and criteria adopted pursuant to this article.
- B. A person may obtain a certificate of registration to operate an ambulance by submitting an application on a form prescribed by the director and by demonstrating to the director's satisfaction that the applicant is in compliance with this article and all rules, standards and criteria adopted by the director for the operation of an ambulance.
- C. A certificate of registration issued under this section terminates upon any change of ownership or control of the ambulance. Following any change of ownership, the new owner of an ambulance shall apply for and receive a new certificate of registration from the director before the ambulance may again be operated in this state. This subsection does not apply if an ambulance service borrows, leases, rents or otherwise obtains a registered ambulance from another ambulance service to temporarily replace an inoperable ambulance.
- D. The department shall issue a certificate of registration to a person who complies with the requirements of this article and who pays an initial registration fee. A certificate of registration is valid for one year. However, an ambulance service may request that the department issue an initial certificate of registration that expires before the end of one year in order for the department to conduct an annual inspection of all of the ambulance service's ambulances at one time. A person may renew a certificate of registration by complying with the requirements of this article and by paying a renewal fee prescribed by the director. The fee for initial registration and registration renewal shall not exceed fifty dollars for each ambulance. The department shall base these fees on an amount that approximates the per vehicle costs incurred by the department to administer this

chapter. The director shall deposit, pursuant to sections 35-146 and 35-147, fees collected under this subsection in the state general fund. The department shall not charge a registration fee for an ambulance to an ambulance service that operates an ambulance or ambulances only as a volunteer not-for-profit service.

36-2213. Regulation of air ambulance services

The director shall adopt rules to establish minimum standards for the operation of air ambulance services that are necessary to assure the public health and safety. The director may use the current standards adopted by the commission on accreditation of air medical services. Each rule shall reference the specific authority from this chapter under which the rule was formulated. The rules shall provide for the department to do the following:

1. Establish standards and requirements relating to at least the following:

(a) Medical control plans. These plans shall conform to the standards adopted pursuant to section 36-2204, paragraph 9.

(b) Qualifications of the medical director of the air ambulance services.

(c) Operation of only those air ambulances registered pursuant to section 36-2212 and licensed pursuant to title 28, chapter 25.

2. Establish response times and operation times to assure that the health and safety needs of the public are met.

3. Establish standards for emergency medical dispatch training, including prearrival instruction. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.

4. Require the filing of run log information.

5. Issue, transfer, suspend or revoke air ambulance service licenses under terms and conditions consistent with this chapter. These rules shall be consistent for all ambulance services.

6. Investigate the operation of an air ambulance service including a person operating an ambulance that has not been issued a certificate of registration and conduct on-site investigations of facilities communications equipment, vehicles, procedures, materials and equipment.

7. Prescribe the terms of the air ambulance service license.

8. Prescribe the criteria for the air ambulance service license inspection process and for determining an air ambulance service's compliance with licensure requirements. The director shall accept proof that an air ambulance service is accredited by the commission on accreditation of air medical services in lieu of all licensing inspections required if the director receives a copy of the air ambulance service's accreditation report.

36-2214. Air ambulance service license

A. A person shall not operate an air ambulance service in this state unless the air ambulance service is licensed and complies with this article and the rules adopted pursuant to this article.

B. On receipt of a properly completed application for initial licensure or relicensure on a form prescribed by the director, the director shall conduct an inspection of the air ambulance service as prescribed by this article. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the air ambulance service.

C. The director shall issue a license if the director determines that an applicant and the air ambulance service for which the license is sought comply with the requirements of this article and rules adopted pursuant to this article and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies.

36-2215. Required insurance or financial responsibility; denial or revocation for failure to comply

A. The director shall not issue an air ambulance service license to an ambulance service unless the applicant for the license or the licensee files with the department a certificate of insurance completed by an insurance company that is authorized to transact business in this state or other evidence of financial responsibility in an amount that the director by rule determines is necessary to adequately protect the interest of the public. The applicant for a license or the licensee shall have malpractice and liability insurance that requires the insurer to compensate for injuries to persons and for loss or damage to property resulting from the negligent operation of the air ambulance service.

B. The director shall deny the application for a license or revoke the license of any air ambulance service that fails to comply with this section.

36-2217. Exemption from regulation

A. This chapter does not apply to:

1. Vehicles used for the emergency transportation of persons injured at an industrial site.
2. Persons engaged in and vehicles used for air transportation of sick or injured people in a noncritical or nonemergency situation as determined by a physician.
3. Medical evacuation equipment used and owned by the department of public safety in air, ground or water evacuation and including fixed wing aircraft, helicopters, ground ambulances and similar ground conveyances, snowmobiles and water traversing equipment.
4. Vehicles provided or contracted for emergency medical services by a political subdivision if these vehicles are primarily used to provide on the scene stabilization of sick, injured, wounded, incapacitated or helpless persons.
5. Ambulances from other states that are:

(a) Responding to a major catastrophe or emergency in this state because there are insufficient registered ambulances in this state to respond in that situation.

(b) Operating either from a location outside of this state to transport a patient to a location within this state or operating from a location outside of this state and crossing through this state to transport a patient to a location outside this state.

6. Stretcher vans that meet the requirements of section 36-2223.

B. Except as provided in subsection A, paragraph 5, subdivision (a) of this section, an ambulance from another state shall not pick up a patient in this state and transport that patient to another location in this state unless that ambulance is registered under this chapter.

36-2232. Director; powers and duties; regulation of ambulance services; inspections; response time compliance

A. The director shall adopt rules to regulate the operation of ambulances and ambulance services in this state. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated. The rules shall provide for the department to do the following:

1. Determine, fix, alter and regulate just, reasonable and sufficient rates and charges for the provision of ambulances, including rates and charges for advanced life support service, basic life support service, patient loaded mileage, standby waiting, subscription service contracts and other contracts for services related to the provision of ambulances. The director may establish a rate and charge structure as defined by federal medicare guidelines for ambulance services. The director shall inform all ambulance services of the procedures and methodology used to determine ambulance rates or charges.

2. Regulate operating and response times of ambulances to meet the needs of the public and to ensure adequate service. The rules adopted by the director for certificated ambulance service response times shall include uniform standards for urban, suburban, rural and wilderness geographic areas within the certificate of necessity based on, at a minimum, population density, geographic and medical considerations.

3. Determine, fix, alter and regulate bases of operation. The director may issue a certificate of necessity to more than one ambulance service within any base of operation. For the purposes of this paragraph, "base of operation" means a service area granted under a certificate of necessity.

4. Issue, amend, transfer, suspend or revoke certificates of necessity under terms consistent with this article.

5. Prescribe a uniform system of accounts to be used by ambulance services that conforms to standard accounting forms and principles for the ambulance industry and generally accepted accounting principles.

6. Require the filing of an annual financial report and other data. These rules shall require an ambulance service to file the report with the department not later than one hundred eighty days after the completion of its annual accounting period.

7. Regulate ambulance services in all matters affecting services to the public to the end that this article may be fully carried out.

8. Prescribe bonding requirements, if any, for ambulance services granted authority to provide any type of subscription service.

9. Offer technical assistance to ambulance services to maximize a healthy and viable business climate for the provision of ambulances.

10. Offer technical assistance to ambulance services in order to obtain or to amend a certificate of necessity.

11. Inspect, at a maximum of twelve month intervals, each ambulance registered pursuant to section 36-2212 to ensure that the vehicle is operational and safe and that all required medical equipment is operational. At the request of the provider, the inspection may be performed by a facility approved by the director. If a provider requests that the inspection be performed by a facility approved by the director, the provider shall pay the cost of the inspection.

B. The director may require any ambulance service offering subscription service contracts to obtain a bond in an amount determined by the director that is based on the number of subscription service contract holders and to file the bond with the director for the protection of all subscription service contract holders in this state who are covered under that subscription contract.

C. An ambulance service shall:

1. Maintain, establish, add, move or delete suboperation stations within its base of operation to ensure that the ambulance service meets the established response times or those approved by the director in a political subdivision contract.

2. Determine the operating hours of its suboperation stations to provide for coverage of its base of operation.

3. Provide the department with a list of suboperation station locations.

4. Notify the department not later than thirty days after the ambulance service makes a change in the number or location of its suboperation stations.

D. At any time the director or the director's agents may:

1. Inquire into the operation of an ambulance service, including a person operating an ambulance that has not been issued a certificate of registration or a person who does not have or is operating outside of a certificate of necessity.

2. Conduct on-site inspections of facilities, communications equipment, vehicles, procedures, materials and equipment.

3. Review the qualifications of ambulance attendants.

E. If all ambulance services that have been granted authority to operate within the same service area or that have overlapping certificates of necessity apply for uniform rates and charges, the director may establish uniform rates and charges for the service area.

F. In consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, the director of the department of health services shall establish protocols for ambulance services to refer and advise a patient or transport a patient by the most appropriate means to the most appropriate provider of medical services based on the patient's condition. The protocols shall include triage and treatment protocols that allow all classifications of emergency medical care technicians responding to a person who has accessed 911, or a similar public dispatch number, for a condition that does not pose an immediate threat to life or limb to refer and advise a patient or transport a patient to the most appropriate health care institution as defined in section 36-401 based on the patient's condition, taking into consideration factors including patient choice, the patient's health care provider, specialized health care facilities and local protocols.

G. The director, when reviewing an ambulance service's response time compliance with its certificate of necessity, shall consider in addition to other factors the effect of hospital diversion, delayed emergency department admission and the number of ambulances engaged in response or transport in the affected area.

36-2234. Hearings; waiver of hearing; emergency action; judicial review

A. The director shall require a public hearing on any proposed action related to rates, fares or charges, operating or response times, bases of operation or certificates of necessity unless subsection C, E, or M of this section applies.

B. A public hearing held pursuant to subsection A of this section shall meet the following requirements:

1. The hearing shall be held pursuant to title 41, chapter 6, article 10.

2. The director shall mail notice of the hearing to every ambulance service in the affected region no later than fifteen days before the hearing.

3. The director may mail notice to other persons who the director determines are interested in the hearing.

4. In a hearing or rehearing conducted pursuant to this article, an ambulance service may be represented by a corporate officer, an employee or a designee who has been specifically authorized by the ambulance service to represent it.

C. The director may waive the hearing required under subsection A of this section if notification, including a general description of the proposed action of the department and the time and manner for any interested person to request a hearing, is given and all of the following apply:

1. Notification of the proposed action has been sent to every ambulance service in the affected region no later than fifteen days before the action.
2. The director has notified other persons who the director determines are interested in the proposed action no later than fifteen days before the action.
3. The director has published notice of the proposed action in a newspaper of general circulation in the affected region at least once each week for two consecutive weeks before the action is taken.
4. The director has received no requests within the fifteen day notification period for a hearing to be held on the proposed action.

D. If the director receives a request pursuant to subsection C, paragraph 4 of this section, the director shall hold a hearing in compliance with subsection B of this section.

E. The director shall not hold a hearing if a person requests a hearing regarding a rate increase that does not exceed the amount computed as follows:

1. Determine the percentage growth in the transportation consumer price index of the United States department of labor, bureau of labor statistics, from the end of the second preceding calendar year to the calendar year immediately preceding the calendar year for which the rate increase is requested.
2. Determine the percentage growth in the medical care consumer price index of the United States department of labor, bureau of labor statistics, from the end of the second preceding calendar year to the calendar year immediately preceding the calendar year for which the rate increase is requested.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection and divide the sum by two.

F. A rate increase authorized pursuant to subsection E of this section is deemed to be fixed by the department at the requested level. Notwithstanding subsection C of this section, the department shall hold a hearing pursuant to section 36-2232, subsection E for any proposed uniform rate or charge that exceeds the annual rate increase prescribed in subsection E of this section. The department shall require the applicants to submit the following information signed by the designated financial officer and the chief executive of the ambulance service who has fiduciary responsibility for providing accurate financial information:

1. A financial statement for the previous twenty-four months relating to the certificated areas.
2. Any additional information the department requires to analyze the request.

G. If an ambulance service with an established general public rate applies for a contract rate or range of rates that is up to thirty per cent less than its established rate, the director shall grant the rate without a public hearing or waiver, and without any right of intervention, unless within ninety days of the filing of a completed application the director determines that the contract rate or range of rates applied for does not accurately reflect the cost and economics of providing the contract services, would adversely affect the service available to the general public in the area of service as designated by its certificate of necessity or would cause any fixed rate, fare or charge to the general public to be adversely affected.

H. If the department disallows a proposed contract rate pursuant to subsection G of this section, the ambulance service has a right to a hearing for review of the proposed contract rate or range of rates.

I. The director may adopt rules for the establishment of a contract rate or range of rates that may be implemented and that exceeds the thirty per cent rate variance identified pursuant to subsection G of this section.

J. Subsections G, H and I of this section are limited to contract rates or a range of rates applied for prescheduled, interfacility or convalescent transports.

K. A service contract between an ambulance service and a political subdivision of this state, including local fire districts, shall be filed with and approved by the department in accordance with the following requirements:

1. On receipt of the proposed contract, the department has fifteen days to review the contract and notify the ambulance service of any additional information the department requires, recommended corrections or any provision that does or may violate this article.

2. The ambulance service has fifteen days to provide the department with the information requested or to submit a revised or amended contract if required under paragraph 1 of this subsection.

3. The contract becomes effective fifteen days after the ambulance service complies with the department's request unless the department determines that any rate or charge or other provisions specified in the contract will cause any fixed rate or charge to the general public rate to be adversely affected or the contract would be in violation of the ambulance service's certificate of necessity.

4. If the department disallows a proposed contract pursuant to this subsection, the ambulance service has a right to a hearing for review of the proposed contract.

5. The rates and charges contained in the contract are the rates and charges fixed by the director in a decision or order for the ambulance service and conform to the ambulance service's current or subsequent general public rates and charges.

6. The area of response is within the ambulance service's certificated area.

L. In case of emergency, the director may take action providing for immediate suspension of a certificate of registration or a certificate of necessity, or both, under this section without notice or a hearing if the director determines that a potential threat to the public health and safety exists. If such action is taken by the director, the director shall conduct a hearing within ten days after the date of

the director's action unless the person against whom the action is directed waives the right to have a hearing held within ten days. If the ten day hearing requirement is waived, the director shall set a date mutually agreeable to the interested parties. The purpose of the hearing is to review the decision of the director to take such action. The director shall make findings of fact and may continue, suspend or modify the director's action.

M. The director shall waive the hearing required under subsection A of this section if geographical changes in suboperation stations do not alter the service area or adversely affect approved response times.

N. Except as provided in section 41-1092.08, subsection H, a final decision of the director is subject to judicial review pursuant to title 12, chapter 7, article 6.

36-2240. Fees

Fees not to exceed the following amounts shall be paid by the owner of an ambulance service to the department for deposit in the state general fund to be available for legislative appropriation in order to carry out the provisions of this chapter:

1. One hundred dollars upon filing an application for a certificate of necessity.
2. Fifty dollars upon filing an application to amend, transfer or renew a certificate of necessity.
3. For the issuance of an initial certificate of necessity, two hundred dollars for each ambulance proposed to be operated by the ambulance service to which the certificate is granted.
4. An annual regulatory fee of two hundred dollars for each ambulance issued a certificate of registration pursuant to section 36-2212, to be collected at the same time as the certificate of registration fee imposed by section 36-2212.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

D. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.

2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

STATE LAND DEPARTMENT
Title 12, Chapter 5, Articles 17, 19



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 15, 2022

SUBJECT: State Land Department
Title 12, Chapter 5, Article 17 & 19

This Five-Year-Review Report (5YRR) from the State Land Department relates to rules in Title 12, Chapter 5, Article 19 regarding prospecting permits. The rules in Article 17, with the exception of one rule, were repealed on August 1, 2000. The remaining rule expired under A.R.S. § 41-1056(E) effective January 21, 2012, and therefore there are no remaining rules in Article 17.

In the last 5YRR of the rules the Department proposed to amend the rules in Article 19, to make them more clear, concise, understandable, and consistent with other rules and statutes. More specifically, the Department indicated R12-5-1903 and R12-5-1905 were repetitive, redundant, and partially ineffective as the rules conflict with other rules as they pertain to fees. . The Department proposed to complete a rulemaking by February 2019 that addressed the issues identified in the report. The Department indicates they did not complete the proposed changes due to budget constraints and competing fiduciary responsibilities. The Land Department also mentions the proposed changes were more idealistic, but not necessary.

Proposed Action

The Department is currently not proposing any changes to the rules.

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

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the rules were adopted in 1976 without the benefit of an economic, small business, and consumer impact statement. The Department issues prospecting permits for mineral exploration on State Trust Lands. Stakeholders include the Department, the mining industry and independent entities that apply for and secure prospecting permits. The Department states they have currently issued 592 active prospecting permits encompassing 281,447 acres of Trust Land. They also go on to say that in FY 2021, prospecting permits generated \$780,015 in permit rental revenue.

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

The Department believes the benefits outweigh the costs of the rules, as the only "cost" to stakeholders is the provision of information which helps the Department to assess whether and how to transact business with an applicant. The Department also believes the rules are necessary for the Department to meet its fiduciary responsibilities while imposing the least burden and cost to both persons regulated by the rules and to the Department.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

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

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

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of R12-5-1903 and R12-5-1905 which relate to agency fees.

The Department indicates R12-5-1905 (2)(a) and R12-5-1903 (D)(1) contradicts another rule, R12-5-1201 regarding fees. The rule specifically cites an application fee of \$25, whereas the actual fee is \$500.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

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

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department indicates the rules are enforced as written.

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

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

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable, the rules do not require a permit or license.

11. Conclusion

As mentioned above, the Department proposed to amend the rules in their last 5YRR, but did not complete the changes. Additionally, the Department did not identify the same inconsistencies in this report as they did in the last 5YRR of these rules, even though no changes have been made. The Department indicates R12-5-1905 (2)(a) and R12-5-1903 (D)(1) contradicts another rule, R12-5-1201 regarding fees. The rule specifically cites an application fee of \$25, whereas the actual fee is \$500.

The Department is currently not proposing to amend the rules.

Council staff recommend the Council further discuss with the Department the reasons why they are currently not proposing to make any changes to the rules. Council staff finds that amending the rules, would result in rules that are more clear, concise, understandable, effective, and consistent with other rules and statutes.

Douglas A. Ducey
Governor



Lisa A. Atkins
Commissioner

Arizona State Land Department

1616 West Adams, Phoenix, Arizona 85007
(602) 542-4631

January 31, 2022

Arizona Department of Administration
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Attn: Nicole Sornsins, Chairperson

RE: Arizona State Land Department's 5 Year Rule Review Report on A.A.C. Title 12, Chapter 5, Articles 17 & 19

Dear Chairperson Sornsins:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Rule Review Report for A.A.C. Title 12, Chapter 5, Articles 17 & 19. This document complies with the requirements under A.R.S. § 41-1056. The Department is in compliance with A.R.S. § 41-1091.

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or acalabresi@azland.gov.

Sincerely,

A handwritten signature in cursive script that reads "Paul M. Peterson".

Paul M. Peterson
Sr. Administrative Counsel

Enclosures

**FIVE YEAR RULE REVIEW
REPORT TO
THE GOVERNOR'S REGULATORY REVIEW COUNCIL**



ARIZONA STATE LAND DEPARTMENT

**TITLE 12 – Natural Resources
CHAPTER 5 – State Land Department**

**Article 17 – Natural Resources Conservation Districts
Article 19 – Prospecting Permits**

Due January 31, 2022

“Serving Arizona’s Schools and Public Institutions Since 1915”

FIVE YEAR RULE REVIEW REPORT

TITLE 12. NATURAL RESOURCES CHAPTER 5. STATE LAND DEPARTMENT

Article 17 – Natural Resources Conservation Districts
Article 19 – Prospecting Permit

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FIVE-YEAR REVIEW REPORT FOR ARTICLES 17 and 19

Summary

The Administrative Procedures Act (APA) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor's Regulatory Review Council (the "Council") for review. The Arizona State Land Department (the "Department") is scheduled to file a review of its rules under Title 12, Chapter 5, Articles 17 and 19 with the Council by the end of January 2022. The Department's complete rules are located in the Arizona Administrative Code ("A.A.C.") Title 12, Chapter 5, Articles 1 through 25 and can be found on the Department's website (www.azland.gov) as well as the Arizona Secretary of State's website (www.azsos.gov).

The Department is not a regulatory agency. It functions as the trustee of the State's 9.2 million acres of Trust land and associated natural resources. The trust status of the lands granted to the State imposes obligations and constraints that would not apply if the State held the land outright. The Department's management of the Trust is governed by provisions in Sections 24-30 of the State's Enabling Act, the Arizona Constitution (Article X), and statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate). In addition, extensive case law governs the Department's procedures and management of the Trust.

The rules under Article 17 covering Natural Resources Conservation Districts, with the exception of A.A.C. R12-5-1707, were repealed at 6 A.A.R. 3180, effective August 1, 2000. The remaining rule, A.A.C. R12-5-1707, expired under A.R.S. § 41-1056(E) at 18 A.A.R. 1652, effective January 31, 2012. Thus, there are no remaining rules in effect under Article 17.

Rules included within A.A.C. Title 12, Chapter 5, Article 19 provides: definitions of terms used in securing and utilizing a prospecting, i.e. mineral exploration, permit on State Trust Land; applicant criteria required to acquire a prospecting permit on State Trust Land; and objective criteria by which a prospecting permit may be converted to a State mineral lease.

Under this Five Year Rule Review Report, the Department evaluated three separate rules relating to Article 19. The Department does not have any intention at this time to amend Article 19 by itself. Instead, the Department generally plans to continue its goals of updating its rules via rulemakings as resources become available and competing priorities allow. The Department will do so in the order and manner it perceives to be in the best interest of the Trust and consistent with the policy goals and directives of the current administration.

ANALYSIS FACTORS LEGEND AND IDENTICAL INFORMATION

Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A):

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 40-1037; and
14. Course of action the agency proposes to take regarding each rule.

Identical Information for All the Rules

The rules contained in this report are identical in the following ways:

5. The rules are currently enforced as written.
7. No written criticism, analysis, or assessment of the rules has been received by the Department during the past five years.
8. The rules were adopted in 1976 without benefit of an economic, small business, and consumer impact statement. The Department discusses the economic impacts of mineral exploration activity on State Trust Land at the end of this report. The rules reviewed in this report help to allow such activity to occur.
9. No business competitiveness analysis for the rule has been received by the Department.
10. The Department submitted a Five-Year Rule Review report on Title 12, Chapter 5, Articles 17 and 19 in January 2017. The Department had proposed to amend Article 19 in 2017. Due to budget constraints and competing fiduciary priorities, the Department did not complete the course of action identified in the previous Five-Year Rule Review Report. The Department also currently finds many of the proposed changes from the 2017 report to be

idealistic but not necessary.

11. The Department believes the benefits outweigh the costs of the rules, as the only “costs” to stakeholders are the provision of information which helps the Department to assess whether and how to transact business with an applicant. The Department also believes the rules are necessary for the Department to meet its fiduciary responsibilities while imposing the least burden and cost to both persons regulated by the rules and to the Department.
12. The rules are not more stringent than corresponding federal laws.
13. This factor does not apply because the Department is not a regulatory agency and does not issue regulatory permits or licenses.

Article 19. Prospecting Permits

Rule R12-5-1901 - Definitions

1. **Statutory Authority:**
A.R.S. § 37-101; § 37-132(A)(1); § 27-231; § 27-251.
2. **Objective:**
The objective of the rule is to define terms used in securing and utilizing a prospecting permit, i.e. mineral exploration permit, on State Land.
3. **Effectiveness:**
The rule is effective as the terms are currently used.
4. **Consistency:**
The rule is consistent with A.R.S. §§ 37-101 and A.R.S. § 27-231. The rule is also consistent with terms used in the mining and exploration industries.
6. **Clear, concise, and understandable:**
The definitions are clear, concise, and understandable.
14. **Proposed Action:**
R12-5-1901 is a functional and useful set of definitions of terms, and no proposed action is made at this time.

Rule R12-5-1903 - Application for Permit

1. **Statutory Authority:**
A.R.S. § 37-132(A)(1); § 27-251.
2. **Objective:**
The rule provides applicant criteria required to acquire a prospecting permit, i.e. mineral exploration permit, on State Land.
3. **Effectiveness:**
The rule is effective as the majority of the rule is repetitive of A.R.S. § 27-251.
4. **Consistency:**
The rule is consistent in the following ways: R12-5-1903(B) reflects A.R.S. § 27-251(A); R12-5-1903(C) adds to R12-5-104 application requirements; and R12-5-1903(E), (F), and (G) reflect A.R.S. § 27-251(A) (regarding withdrawal of land under application); § 27-251(B) (regarding issuance of permit, rental, bond); and § 27-251(C) (regarding default by applicant), respectively. However, R12-5-1903(D)(1) requires a fee which

conflicts with R12-5-1201 and Rule 12-5-1201 is widely used for agency fee determinations.

6. **Clear, concise, and understandable:**
The rule is easy to understand and helpful to stakeholders. We have not received any feedback from stakeholders that the rule is confusing, misleading, or unclear.

14. **Proposed Action:**
R12-5-1903 is functional, and no proposed action is made at this time as the rule effectively serves stakeholders and the Department.

Rule R12-5-1905 - Conversion of Permitted Acreage to Mineral Lease

1. **Statutory Authority:**
A.R.S. § 37-132(A)(1); § 27-254.

2. **Objective:**
The objective of the rule is to provide criteria by which a State prospecting permit, i.e. mineral exploration permit, may be converted to a State mineral lease.

3. **Effectiveness:**
The rule is effective as written.

4. **Consistency:**
The rule, in part, is repetitive of statute in part and therefore consistent. For example: Subparagraph (1) reflects A.R.S. § 27-254 regarding converting a prospecting permit to a State mineral lease; Subparagraph (2)(e) reflects A.R.S. § 27-254 in its requirement for proof of discovery prior to converting a prospecting permit to a mineral lease; Subparagraph (4) reflects A.R.S. § 27-254 which closes land under mineral leases to prospecting permits; and subparagraph (2)(b) requires advanced payment of rental which reflects A.R.S. § 27-234 (A)(2). However, subparagraph (2)(a) contradicts R12-5-1201 regarding fees (The rule cites an application fee of \$25.00 whereas the actual fee is \$500.00)

6. **Clear, concise, and understandable:**
Generally, the rule is clear and easily understood.

14. **Proposed Action:**
R12-5-1905 is functional in that it helps the Department process conversions to Mineral Leases, and no proposed action is made at this time as the rule effectively serves stakeholders and the Department.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

Article 19. Prospecting Permits

Prospecting Permits are issued by the Department for mineral exploration on Trust Lands. The prospecting permit does not guarantee conversion to a mineral lease. To convert a prospecting “discovery” to a mineral lease, certain statutory criteria must be met.

The mining industry and independent entities continue to apply for and secure prospecting permits encompassing large areas either adjacent to their mining operations or in regions of interest. It is in a mining company’s best interest to protect their interest in a particular region from competing interests by tying up large areas to allow them time to assess an area’s mineral potential or reserves. Mining on Trust Land generates generous amounts of royalties for the Permanent Fund. Mining in Arizona is a major contributor to the State’s economy, both Statewide and on a local level: taxes are paid; goods and services of small businesses are secured; work is provided for the labor force; highway and railway transportation services are utilized; and communities benefit when mining companies sponsor or donate to the construction of recreational and community facilities.

Within the first two years of the permit’s term, A.R.S. § 27-252(A)(5) requires the holder of a prospecting permit to either expend \$10 per acre under permit in exploration costs or pay the Department \$10 per acre. For the remaining three years of the prospecting permit, \$20 per acre is required under the same conditions.

The Department has currently issued 592 active prospecting permits encompassing 281,446 acres of Trust Land. In FY 2021, prospecting permits generated \$780,015 in permit rental revenue. Rental revenue from prospecting permits are distributed to the beneficiaries annually. Mining or mineral extraction, other than for assay purposes, is not permitted under a prospecting permit and therefore no royalties are associated with prospecting permits. Table 2 provides an overview of prospecting activities on Trust Land for the past five years.

Table 2. Prospecting Permit activities on Trust Lands from FY 2017 - 2021.

Fiscal Year	No .of Permits	No. of Acres	Rental
2011 – 2012	548	275,926	590,469
2012 – 2013	643	330,737	1,465,336
2013 – 2014	630	320,724	1,574,455
2014 – 2015	574	289,109	770,895
2015 – 2016	592	281,447	780,015

APPENDIX A

Arizona Administrative Code Rules Reviewed

Title 12, Chapter 5, Article 19. Prospecting Permits

R12-5-1901. Definitions

R12-5-1903. Application for Permit

R12-5-1905. Conversion of Permitted Acreage to Mineral Lease

[Arizona Administrative Code](#)

[Title 12. Natural Resources](#)

[Chapter 5. State Land Department \(Refs & Annos\)](#)

[Article 19. Prospecting Permits \(Refs & Annos\)](#)

A.A.C. R12-5-1901

R12-5-1901. Definitions

[Currentness](#)

- A. “Commissioner” means State Land Commissioner.
- B. “Date of issuance of permit” means the 15th day after approval of the designated land by the Commissioner.
- C. “Department” means State Land Department.
- D. “Exploration” means activity conducted upon the state land covered by an exploration permit to determine the existence or nonexistence of a valuable mineral deposit, including but not limited to geological, geochemical or geophysical surveys conducted by qualified experts, and drilling, sampling and excavation, together with the costs of assay and metallurgical testing of samples from such land.
- E. “Geochemical surveys” means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.
- F. “Geological surveys” means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.
- G. “Geophysical surveys” means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations.
- H. “Mineral” means all natural inorganic substances that may be extracted from the earth and includes mineral compounds and aggregates, natural building stone, saline deposits, and such organic substances as coal and guano but does not include petroleum and related hydrocarbon gases or other natural gases.
- I. “Qualified expert” means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

Credits

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1901 renumbered from Section R12-5-731 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 27, Issue 49, December 3, 2021. Some sections may be more current, see credits for details.

A.A.C. R12-5-1901, AZ ADC R12-5-1901

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[Arizona Administrative Code](#)
[Title 12. Natural Resources](#)
[Chapter 5. State Land Department \(Refs & Annos\)](#)
[Article 19. Prospecting Permits \(Refs & Annos\)](#)

A.A.C. R12-5-1903

R12-5-1903. Application for Permit

Currentness

A. Qualifications of applicant. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and authorized to transact business in the state, may apply to the Commissioner for a mineral exploration permit on state land.

B. Area covered by permit application. Separate application shall be made for each mineral exploration permit. A permit may include one or more of the rectangular subdivisions of 20 acres, more or less, or lots of state land in any one section of the public land surveys.

C. Information to be furnished by the applicant

1. The application for permit shall be in such form as the Commissioner may prescribe, shall be in writing, signed by the applicant or an authorized agent or attorney for the applicant, and shall contain the following information:

- a. Name and address of applicant.
- b. Statement whether applicant is an individual, partnership or corporation.
- c. Statement of citizenship.
- d. If a corporation:
 - i. Name.
 - ii. State of incorporation.
 - iii. Arizona business address.
 - iv. Affirmation of authorization to do business in Arizona.

e. Age and marital status.

f. Description according to the public land survey of the land for which application is being made.

g. Location of mineral locations, claims or leases on the land under application.

h. Location of abandoned underground or other major workings on the land under application.

i. Location of proposed roadways within the area under application and of proposed of ingress and egress over other state land concerned.

j. Location of improvements or crops on land under application, or on land over which proposed routes of ingress and egress pass. (Information required in (g), (h), and (i) above, shall be conveyed by means of a reasonably accurate plat, or drawing, accompanying the application form.)

2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the furnishing by the applicant of such additional information as may appear to him to be necessary or desirable, either generally or specifically, for the proper administration of the law governing prospecting permits.

D. Filing application for permit; fee; time of filing

1. Each application filed with the Department shall be accompanied by payment to the Department of a filing fee of \$15.00.

2. Each application so filed that meets the requirements of (A), (B), and (C)(1) above shall be stamped by the Department with the time and date it is filed with the Department and, upon being so stamped, shall have a priority over any other application for a permit involving the same state land which may be filed with the Department subsequent to such time and date.

a. Each application filed by U.S. Mail shall be considered to have been filed in the Department at the time and date it is delivered to the mail room of the Department, provided the requirements of (A), (B), and (C)(1) have been met.

b. When two or more applications are delivered to the mail room of the Department in the same mail, the applications shall be deemed to have been simultaneously filed.

3. Each application not meeting the requirements of (A), (B), and (C)(1) above shall be rejected by the Department.

E. Withdrawal from mineral location of lands under application. The open state land involved in a filed and time-stamped application for permit shall be deemed withdrawn from mineral location at the time the application is stamped and shall remain so withdrawn so long as the application is pending.

F. Adjudication of rights; notice to applicant; issue of permit

1. Not less than 30 days, nor more than 45 days from the filing of the application with the Department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the Department, or if such prior application is then pending but is subsequently cancelled, not more than 15 days after it is cancelled, the Department shall mail to the applicant, by registered or certified mail at the address shown on the application, a written notice designating:

- a. The state land described in the application which, at the time the application was filed with the Department, was open to entry and location as a mineral claim or claims upon discovery of a valuable mineral deposit thereon,
- b. The amount of rental required to be paid for the mineral exploration permit, and
- c. Whether a bond will be required as a condition to issuance of such permit.

2. If, within 15 days after the mailing of such notice, the applicant shall pay to the Department as rental for the permit, the amount of \$2.00 per acre for each acre of state land designated in the notice and shall file with the Department the bond, if any, required as a condition to issuance, the Commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice.

G. Default by applicant; cancellation of application. Upon failure of the applicant for a mineral exploration permit to make the payment or furnish the required bond within the period of 15 days, as provided in (F) above, the application shall be deemed cancelled, of no further effect and the filing fee forfeited.

H. Simultaneous filings; conflicts; adjudication of priority

1. In the event it is determined by the Department that two or more applications for a mineral exploration permit have been filed at the same time, as indicated by the time-stamp, and that the applications include one or more rectangular subdivisions of 20 acres, more or less, or lots of state land which are identical, a conflict of priority shall exist as to such identical land.

2. Resolution of conflicts of priority shall be by drawing held by the Department not less than ten, nor more than 20 days after the simultaneous filing. Ample notice by registered mail of conflict and drawing shall be given each applicant involved. The drawing shall be conducted in such a manner as to resolve the order of priority of filing between or among the simultaneously filed applications, and suitable notice of the determined order of priority shall be given to each such applicant by the Department.

I. Right of applicant to use of land. The filing of an application for a mineral exploration permit shall not confer upon the applicant any greater right to use of the land under application than that held before such filing.

Credits

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to [A.R.S. 41-1026](#), valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1903 renumbered from Section R12-5-733 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 27, Issue 49, December 3, 2021. Some sections may be more current, see credits for details.

A.A.C. R12-5-1903, AZ ADC R12-5-1903

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[Arizona Administrative Code](#)

[Title 12. Natural Resources](#)

[Chapter 5. State Land Department \(Refs & Annos\)](#)

[Article 19. Prospecting Permits \(Refs & Annos\)](#)

A.A.C. R12-5-1905

R12-5-1905. Conversion of Permitted Acreage to Mineral Lease

[Currentness](#)

Application for lease.

1. Following discovery of a valuable mineral deposit upon the state land covered by a mineral exploration permit with a rectangular subdivision of 20 acres, more or less, or lot of the public land survey, the permittee may apply to the Commissioner for a mineral lease upon state land so contained.
 - a. For the purpose of the application and any mineral lease issued pursuant to such application, such rectangular subdivision or lot shall constitute a mineral claim without extra-lateral rights and shall be deemed to have been located as of the date of filing the application for mineral lease.

2. The application for mineral lease shall be on a form provided by the Commissioner and shall be accompanied by:
 - a. Lease application fee of \$25.00 per lease.

 - b. Advance annual rental of \$15.00 per claim.

 - c. A plat, to scale, accurately showing location of the claim properly tied in to known U.S. Public Survey corner monuments to properly identify the land claimed.

 - d. A reasonably accurate drawing showing the proposed route of ingress and egress over other state land concerned.

 - e. Evidence, in a form acceptable to the Commissioner, constituting the applicant's proof of a valuable mineral deposit within the bounds of the claim. Final determination as to such proof shall be made by the Commissioner from the evidence submitted or by any other means at his disposal.

3. Ordinarily, both the application to lease, and the lease, shall be on the basis of one application per claim and one lease per claim. However,

a. The Commissioner may permit the acceptance of applications embracing more than one claim provided the claims are contiguous and further provided, that prior arrangement for such consolidation has been made and approval had; and

b. The Commissioner may permit or cause consolidation of claims for lease purposes to the extent consistent with required Departmental administrative procedures. Any consolidation thus effected shall not alter the provisions of subsection (2) above.

4. From and after the date of issuance of a mineral lease, the mineral claim or claims covered by such mineral lease shall be deemed to be excluded from the prospecting permit.

Credits

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to [A.R.S. 41-1026](#), valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1905 renumbered from Section R12-5-735 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 27, Issue 49, December 3, 2021. Some sections may be more current, see credits for details.

A.A.C. R12-5-1905, AZ ADC R12-5-1905

APPENDIX B
Related Statutes for ASLD's January 2022 5YRRR

A.R.S. § 27-231 Definition of Mineral

A.R.S. § 27-251 Application for Mineral Exploration Permit

A.R.S. § 27-254 Mineral Lease

A.R.S. § 37-101 Definitions

A.R.S. § 37-132 Powers and duties

[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 2. Mining Rights in Land \(Refs & Annos\)](#)

[Article 3. Lease of State Lands for Mineral Claims \(Refs & Annos\)](#)

A.R.S. § 27-231

§ 27-231. Definition of mineral

[Currentness](#)

In this article, unless the context otherwise requires, “mineral” means all metallic ore minerals and industrial minerals other than common variety minerals as defined in [§ 27-271](#).

Credits

Added by [Laws 1998, Ch. 133, § 2](#).

[Notes of Decisions \(1\)](#)

A. R. S. § 27-231, AZ ST § 27-231

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 2. Mining Rights in Land \(Refs & Annos\)](#)

[Article 4. Mineral Exploration Permits and Mineral Leases \(Refs & Annos\)](#)

A.R.S. § 27-251

§ 27-251. Application for mineral exploration permit

Effective: July 29, 2010

[Currentness](#)

A. Any natural person over eighteen years of age and any other person qualified to transact business in this state may apply to the state land commissioner for a mineral exploration permit on the state land in one or more of the rectangular subdivisions of twenty acres, more or less, or lots, in any one section of the public land survey. Such application shall be in writing and signed by the applicant, or an authorized agent or attorney for the applicant, and shall contain the name and address of the applicant, a description according to the public land survey of the state land for which the applicant seeks a mineral exploration permit, and such other information as the commissioner may prescribe by rule. The application shall be filed with the state land department and shall be accompanied by payment to the department of a filing fee as prescribed pursuant to [§ 37-107](#). Each application meeting the requirements of this section shall be stamped by the department with the time and date it is filed with the department. The application shall have priority over any other application for a mineral exploration permit involving the same state land which may be filed with the department subsequent to such time and date, and such land shall be deemed withdrawn as long as the application is pending.

B. Not less than thirty days nor more than forty-five days from the filing of the application with the department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the department, or if such prior application is then pending but is subsequently cancelled, not more than thirty days after it is cancelled, the department shall mail to the applicant at the address shown on the application a written notice designating the state land that is described in the application and that, at the time the application was filed with the department, was open to application, the amount of rental required to be paid for the mineral exploration permit as herein provided, and whether a bond will be required under the provisions of [§ 27-255](#) as a condition to issuance of such permit. If, within thirty days after the mailing of such notice, the applicant pays to the department as rental for the permit the amount of two dollars per acre for each acre of state land designated in the notice and files with the department the bond, if any, required under [§ 27-255](#), and if the commissioner finds that issuing the permit is in the best interest of the trust, the commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice. The commissioner may deny the application for any of the following reasons:

1. The application was not made in good faith.
2. The proposed exploration or possible future mining activities would not be the highest and best use of the trust lands.
3. The value and income potential of surrounding trust lands would be adversely affected and the benefit from proposed exploration and future mining activity cannot reasonably be expected to be greater than the diminished value to those surrounding trust lands.

4. The proposed operations would violate applicable state or federal law.

5. The commissioner determines that the proposed exploration activities or possible future mining activities will create a liability to the state greater than the income from the proposed operations.

C. During the period such mineral exploration permit is in effect no person except the permittee and the authorized agents and employees of the permittee shall be entitled to explore for minerals on the state land covered by the permit. If the applicant fails to make the payment or furnish the bond within the period of thirty days, the application shall be deemed cancelled and of no further effect.

Credits

Added by Laws 1961, Ch. 24, § 1. Amended by Laws 1973, Ch. 60, § 1; Laws 1986, Ch. 124, § 2, eff. April 18, 1986; [Laws 1989, Ch. 288, § 7, eff. June 28, 1989](#); [Laws 1990, Ch. 114, § 1](#); [Laws 1998, Ch. 133, § 9](#); [Laws 2010, Ch. 243, § 1](#).

[Notes of Decisions \(4\)](#)

A. R. S. § 27-251, AZ ST § 27-251

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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[Arizona Revised Statutes Annotated](#)

[Title 27. Minerals, Oil and Gas](#)

[Chapter 2. Mining Rights in Land \(Refs & Annos\)](#)

[Article 4. Mineral Exploration Permits and Mineral Leases \(Refs & Annos\)](#)

A.R.S. § 27-254

§ 27-254. Mineral lease

[Currentness](#)

Following discovery of a valuable mineral deposit upon the state land covered by a mineral exploration permit within a rectangular subdivision of twenty acres, more or less, or lot, of the public land survey, the permittee may apply to the commissioner for a mineral lease upon the state land within such rectangular subdivision, or lot, and such land shall, for the purpose of the application and any mineral lease issued pursuant to such application, constitute a mineral claim without extralateral rights, and shall be deemed to have been located as of the date of filing the application for the mineral lease. Upon receipt of an application from the permittee for a mineral lease, and satisfactory proof of discovery of a valuable mineral deposit, the commissioner shall issue a mineral lease to the applicant for the mineral claim or claims covered by the application. From and after the date of issuance of a mineral lease, the mineral claim or claims covered by such mineral lease shall be deemed to be excluded from the exploration permit. Upon application to the commissioner, not less than thirty nor more than sixty days prior to the expiration of the lease, the lessee, if not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of twenty years.

Credits

Added by Laws 1961, Ch. 24, § 1. Amended by [Laws 1998, Ch. 133, § 11](#).

[Notes of Decisions \(1\)](#)

A. R. S. § 27-254, AZ ST § 27-254

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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[Arizona Revised Statutes Annotated](#)
[Title 37. Public Lands \(Refs & Annos\)](#)
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)
[Article 1. State Land Department \(Refs & Annos\)](#)

A.R.S. § 37-101

§ 37-101. Definitions

Effective: August 2, 2012

[Currentness](#)

In this title, unless the context otherwise requires:

1. “Agricultural lands” means lands which are used or can be used principally for:
 - (a) Raising crops, fruits, grains and similar farm products.
 - (b) Algaculture. For the purposes of this subdivision “algaculture” means the controlled propagation, growth and harvest of algae.
2. “Amortized value” means the value for improvements established pursuant to [§ 37-281.02, subsection G](#).
3. “Commercial lands” means lands which can be used principally for business, institutional, religious, charitable, governmental or recreational purposes, or any general purpose other than agricultural, grazing, mining, oil, homesite or rights-of-way.
4. “Commissioner” means the state land commissioner.
5. “Community identity package” means a design theme including such elements as architecture, landscape, lighting, street furniture, walls and signage.
6. “Department” means the state land department.
7. “Grazing lands” means lands which can be used only for the ranging of livestock.
8. “Holding lease” means a commercial lease issued solely to grant a limited use leasehold interest in state land in anticipation of future development.
9. “Homesite lands” means lands which are suitable for residential purposes.

10. “Improvements” means anything permanent in character which is the result of labor or capital expended by the lessee or his predecessors in interest on state land in its reclamation or development, and the appropriation of water thereon, and which has enhanced the value of the land.

11. “Infrastructure” means facilities or amenities, such as streets, utilities, landscaping and open space, which are constructed or located on state lands and which are intended to benefit more than the land on which they are immediately located by enhancing the development potential and value of the state lands impacted by the facility or amenities.

12. “Leapfrog development” means the development of lands in a manner requiring the extension of public facilities and services from their existing terminal point through intervening undeveloped areas that are scheduled for development at a later time, according to the plans of the local governing body having jurisdiction for the area and which is responsible for the provision of these facilities and services.

13. “Leased school or university land” means school or university land for which a lease has been issued by the state, or the territory of Arizona, under which the lessee retains rights.

14. “Master developer” means a person who assumes, as a condition of a land disposition, the responsibilities prescribed by the department for infrastructure or community identity package amenities, or both, or for implementing a development plan containing a master plan area.

15. “Participation contract” means a contract arising out of a sale together with other rights and obligations in trust lands whereby the department receives a share of the revenues generated by subsequent sales or leases.

16. “Section of land” means an area of land consisting of six hundred forty acres.

17. “State lands” means any land owned or held in trust, or otherwise, by the state, including leased school or university land.

18. “Sublease” means an agreement in which the lessee relinquishes control of the leased land to another party for the purposes authorized in the lease.

19. “Urban lands” means any state lands which are adjoining existing commercially or homesite developed lands and which are either:

(a) Within the corporate boundaries of a city or town.

(b) Adjacent to the corporate boundaries of a city or town.

(c) Lands for which the designation as urban lands is requested pursuant to [§ 37-331.01](#).

20. “Urban sprawl” means the development of lands in a manner requiring the extension of public facilities and services on the periphery of an existing urbanized area where such extension is not provided for in the existing plans of the local governing body having the responsibility for the provision of these facilities and services to the lands in question.

Credits

Amended by Laws 1979, Ch. 207, § 1; Laws 1981, 1st S.S., Ch. 1, § 2; Laws 1982, Ch. 189, § 1, eff. April 22, 1982; [Laws 1989, Ch. 229, § 1](#); [Laws 1990, Ch. 24, § 1](#); [Laws 1990, Ch. 25, § 2](#); [Laws 1990, Ch. 77, § 2](#); [Laws 1992, Ch. 73, § 1](#); [Laws 1994, Ch. 171, § 1](#); [Laws 1996, Ch. 121, § 1](#); [Laws 1996, Ch. 133, § 1](#); [Laws 1998, Ch. 184, § 1](#), eff. May 28, 1998; [Laws 2012, Ch. 202, § 1](#).

[Notes of Decisions \(21\)](#)

A. R. S. § 37-101, AZ ST § 37-101

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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[Arizona Revised Statutes Annotated](#)
[Title 37. Public Lands \(Refs & Annos\)](#)
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)
[Article 2. State Land Commissioner](#)

A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 29, 2012

[Currentness](#)

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to [§ 37-202](#).
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10¹ and, except as provided in [§ 41-1092.08, subsection H](#), are subject to judicial review pursuant to title 12, chapter 7, article 6.²
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.
8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4³ and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to [§ 38-611](#).

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under [§ 37-107, subsection B](#), paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20⁴ and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to [§ 37-107](#).

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to [§ 9-461.06](#) or [11-805](#).

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to [§ 37-312](#).

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

Credits

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; [Laws 1989, Ch. 171, § 1](#); [Laws 1992, Ch. 190, § 1](#); [Laws 1992, Ch. 357, § 1](#); [Laws 1993, Ch. 169, § 3, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 3](#); [Laws 1997, Ch. 221, § 167](#); [Laws 1997, Ch. 249, § 1](#); [Laws 1999, Ch. 209, § 1](#); [Laws 2000, Ch. 10, § 1](#); [Laws 2000, Ch. 113, § 158](#); [Laws 2002, Ch. 336, § 2](#); [Laws 2003, Ch. 69, § 2](#); [Laws 2010, Ch. 243, § 6](#); [Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011](#); [Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011](#); [Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012](#).

[Notes of Decisions \(40\)](#)

Footnotes

[1](#) Section 41-1092 et seq.

[2](#) Section 12-901 et seq.

[3](#) Section 41-741 et seq.

[4](#) Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

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INDUSTRIAL COMMISSION
Title 20, Chapter 5, Article 13



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 15, 2022

SUBJECT: Industrial Commission of Arizona
Title 20, Chapter 5, Article 13

This Five-Year-Review Report (5YRR) from the Industrial Commission of Arizona relates to rules in Title 20, Chapter 5, Article 13 regarding Treatment Guidelines.

This is the first 5YRR of these rules.

Proposed Action

The Commission proposes to address the two minor issues identified in the report, but plans to include the amendments in the next substantive revision of Article 13.

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

Yes, the Commission cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules in Article 13 were last reviewed in 2016 and the Commission believes that the analysis in the 2016 EIS is still relevant. According to the Commission, since the

adoption of the drug formulary there has been a 5% decrease in the price per prescription, and the average drug payment per active claim with at least one prescription drug has decreased 12% from 2016 through 2019. Between 2018 and 2019, the medical cost per lost time claim decreased by the largest amount since 2010.

Stakeholders include the Commission, injured workers employed in Arizona, Arizona lawyers defending injured workers, and insurance carriers.

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

The Commission states that the probable benefits of the rules in Article 13 significantly outweigh the probable costs. In addition, the Commission believes that the rules impose the least burden and costs on the regulated.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes, the Commission received two written criticisms to the rules on November 30, 2017 and February 16, 2018 from the Arizona Association of Lawyers for Injured Workers. The Commission properly responded to the comments.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R20-5-1301 - Adoption and Applicability of the Article

R20-5-1311 - Administrative Review by Commission

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

Yes, the Commission indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Commission indicates the rules are effective in achieving their objectives.

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

Yes, the Commission indicates the rules are enforced as written.

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

Not applicable, there are no corresponding federal laws to the rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable, the rules do not require the issuance of a general permit.

11. Conclusion

As mentioned above, the Department identified two minor issues in the rules, but is not proposing to make any changes to the rules until more substantive changes are necessary. Council staff find the rules to be overall, clear, concise, and understandable.

Council staff recommends approval of this report.

**THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR**



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January 31, 2022

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 13, Five-year Review Report

Dear Ms. Sornsin:

The Industrial Commission of Arizona (the "Commission") submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 13.

Electronic copies of this cover letter, the report, the rules being reviewed, the general and specific statutes authorizing the rules, and economic impact statement are concurrently submitted by e-mail to Krishna Jhaveri. The report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 13 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602) 542-5905.

Sincerely,

A handwritten signature in cursive script that reads "James Ashley".

James Ashley
Director

GJT/kh
Enclosure

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 13. TREATMENT GUIDELINES

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 13. TREATMENT GUIDELINES

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3.	RULES REVIEWED	Attached
4.	GENERAL AND SPECIFIC STATUTES	Attached
5.	ECONOMIC IMPACT STATEMENT	Attached

FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation (the Arizona Workman’s Compensation Act) implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission’s Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 13, as well as other substantive policy statements and all rules, which are available on the Commission’s website.

About Article 13 Generally

In 2012, the Arizona Legislature directed the Commission to “develop and implement a process for the use of evidence-based treatment guidelines, where appropriate, to treat injured workers.” *See* A.R.S. § 23-1062.03. With significant stakeholder input, the Commission promulgated twelve rules, published in Title 20, Chapter 5, Article 13 of the Arizona Administrative Code (“Article 13” or the “Treatment Guidelines”). Among other things, the Treatment Guidelines: (1) prescribe the use of evidence-based treatment guidelines as a tool to support clinical decision making and quality health care delivery to injured workers within Arizona’s workers’ compensation system;

(2) adopted Work Loss Data Institute’s Official Disability Guidelines – Treatment in Workers Compensation (the “Official Disability Guidelines”) as the standard reference for evidence-based medicine; (3) until further action of the Commission, limited the applicability of the Official Disability Guidelines to the management of chronic pain and the use of opioids for all stages of pain management; (4) outlined an administrative process for the Commission to modify the applicability of the Official Disability Guidelines; (5) outlined a noncompulsory process for a medical provider or injured worker to seek preauthorization from a payer for medical services or treatment; (6) established an administrative review process to help resolve disputes between medical providers, injured workers, and payers; and (7) outlined procedures for bringing unresolved disputes to the Commission for administrative hearing.

2018 Rulemaking

In 2017, the Arizona Legislature (in Laws 2017, Ch. 287, § 5) directed the Commission to “review and determine a process for streamlining the authorization process for treatment that is within the evidence-based treatment guidelines.” The Commission completed its review of the existing authorization process in December 2017 and, based upon suggestions submitted by stakeholders, approved the following methods for streamlining the Article 13 authorization process:

1. Develop and mandate the use of a Medical Treatment Preauthorization Form with accompanying instructions; and
2. Reduce the time period within which a payer must respond to requests for preauthorization or reconsideration from ten business days to seven business days.

In addition to efforts to streamline Article 13, the Commission carefully studied the propriety of modifying the applicability of the Official Disability Guidelines pursuant to A.R.S. § 23-1062.03 and A.A.C. R20-5-1301(C). Under A.A.C. R20-5-1301(B), absent further action of the Commission, the Official Disability Guidelines only applied to the management of chronic pain and the use of opioids for all stages of pain management. Under R20-5-1301(C), however, the Commission was authorized to “modify or change the applicability of the guidelines” if the Commission determined that modification or changing the applicability of the guidelines would: (1) improve medical treatment for injured workers; (2) make treatment and claims processing more efficient and cost effective; and (3) the guidelines adequately cover the relevant body parts or conditions.

After evaluating study materials and stakeholder feedback, the Commission determined (at a public Commission meeting in December 2017) that modifying the applicability of the Official Disability Guidelines to cover all body parts and conditions would improve medical treatment for injured workers and would make treatment and claims processing more efficient and cost effective. In addition, based upon written reviews received from board-certified physicians in Arizona (representing various specialties), the Commission determined that the Official Disability Guidelines adequately cover all body parts and conditions. Based on these determinations, the Commission took formal action to modify the applicability of the Official Disability Guidelines to all body parts and conditions, effective October 1, 2018.

Rulemaking to formally streamline and update Article 13 was completed in 2018. That rulemaking including the following:

- Amended R20-5-106 (“Commission Forms”) to describe and mandate the use of the Medical Treatment Preauthorization Form.
- Amended R20-5-1301 (“Adoption and Applicability of the Article”) and R20-5-1311 (“Administrative Review by Commission”) to reflect the Commission’s decision to modify the applicability of the Official Disability Guidelines to apply to all body parts and conditions and to state applicable effective dates.
- Amended R20-5-1303 (“Provider Request for Preauthorization”); R20-5-1309 (“Payer Decision on Request for Preauthorization”); R20-5-1310 (“Payer Reconsideration on Request for Preauthorization”); and R20-5-1311 (“Administrative Review by Commission”) to: (1) mandate the use of the Medical Treatment Preauthorization Form; (2) reduce the time period for a payer to respond to a request for preauthorization or reconsideration from ten business days to seven business days; (3) remove pre-existing requirements for a request for preauthorization, a decision on a request for preauthorization, a decision on a request for reconsideration, and a request for administrative review; and (4) provide that a payer’s decision on a request for preauthorization or reconsideration may be provided to the injured worker’s authorized representative.
- Amended R20-5-1309 (“Provider Decision on Request for Preauthorization”) to require that a payer who receives a deficient request for preauthorization – either because it is incomplete or not submitted using the Medical Treatment Preauthorization

Form – must, within seven business days of receiving and identifying the deficient request, either: (1) act on the deficient request by using the Medical Treatment Preauthorization Form; or (2) notify the provider making the request that a request for preauthorization must be submitted on the Medical Treatment Preauthorization Form.

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 13. TREATMENT GUIDELINES

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

The rules in Article 13 have general and specific authorization under: (1) A.R.S. § 23-107(A)(1), which states that the Commission “has full power, jurisdiction, and authority to . . . [f]ormulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1]”; (2) A.R.S. § 23-921(B), which states that “[t]he Commission may make and declare all rules and regulations which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings”; (3) A.R.S. § 23-1062.03, which specifically directed the Commission to “develop and implement a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers”; and (4) Laws 2017, Ch. 287, § 5, which specifically directed the Commission to “review and determine a process for streamlining the authorization process for treatment that is within the evidence-based treatment guidelines.”

2. Objective of the rules, including the purposes for the existence of the rules.

The Commission’s overarching objectives regarding Article 13 are to: (1) improve medical treatment for injured workers; (2) make treatment and claims processing more efficient and cost effective; (3) develop and implement a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers; and (4) set forth a streamlined procedural framework for using evidence-based medical treatment guidelines.

R20-5-1301. Adoption and Applicability of the Article.

R20-5-1301. Describes the purpose and scope of Article 13. Adopts the Official Disability Guidelines as the standard reference for evidence-based medicine used in treating

injured workers in Arizona's workers' compensation system. Specifies the criteria and procedure for modifying or changing the applicability of the Treatment Guidelines.

R20-5-1302. Definitions.

R20-5-1302 Defines terms used in Article 13 (to the extent terms were not already defined by statute).

R20-5-1303. Provider Request for Preauthorization.

R20-5-1303. Outlines the process for requesting preauthorization for medical treatment or services. Specifies that preauthorization is not required under the Arizona Workers' Compensation Act.

R20-5-1304. Payer Denial of Request for Preauthorization.

R20-5-1304. Outlines prohibited grounds for payer denial of a request for preauthorization. Specifies the procedure to be followed if a payer denies a request for preauthorization that is supported by the Official Disability Guidelines. Specifies the procedure to be followed if a payer obtains an IME to serve as the basis for a preauthorization decision.

R20-5-1305. Payer Denial of Payment of Provided Treatment or Services

R20-5-1305 Outlines prohibited grounds for a payer to refuse to pay for provided treatment or services. Specifies the procedure that may be followed if a payer refused to pay for provided treatment or services that are supported by the Official Disability Guidelines.

R20-5-1306. Payer Reversal of Decision to Deny Treatment or Services

R20-5-1306 Specifies that a payer may reverse its decision to deny treatment or services at any time through the process described in Article 13.

R20-5-1307. Payer Decision, In Whole or In Part.

- R20-5-1307 Specifies that a payer may issue a decision approving or denying a request for preauthorization in whole or in part.
- R20-5-1308. Failure to Comply with Required Time Limits
- R20-5-1308 Specifies that a payer’s failure to comply with Article 13 time limits may be considered “unreasonable delay” under R20-5-163.
- R20-5-1309. Payer Decision on Request for Preauthorization.
- R20-5-1309. Outlines the timeline and manner in which a payer must respond to a request for preauthorization. Specifies the consequence of a payer failing to respond in a timely manner to a request for preauthorization. Specifies the process to be followed if a payer receives an improper or incomplete request for preauthorization. Specifies the procedure to be followed if a payer requests an IME under R20-5-114. Specifies the procedure for an injured worker or provider to request reconsideration of a payer denial on a request for preauthorization. Specifies the procedure to be followed if a payer obtains an IME to serve as the basis for a decision. Specifies the procedure to be followed if a payer denies a request for preauthorization that is supported by the Official Disability Guidelines under R20-5-1304(B).
- R20-5-1310. Payer Reconsideration on Request for Preauthorization.
- R20-5-1310 Outlines the timeline and manner in which a payer must respond to a request for reconsideration. Specifies the consequence of a payer failing to respond in a timely manner to a request for reconsideration. Specifies the procedure to be followed if a payer requests an IME under R20-5-114. Specifies the procedure for an injured worker or provider to seek Commission administrative peer review of a payer reconsideration decision.
- R20-5-1311. Administrative Review by Commission.
- R20-5-1311. Specifies the requirements and procedures for requesting Commission administrative peer review of a payer decision. Outlines the responsibilities of the

Commission in processing a request for administrative peer review. Specifies the manner in which an administrative peer review is to be conducted, the required criteria that must be met by a peer reviewer, and the ability of a peer reviewer to request additional information and documentation from a provider, injured worker, or payer. Specifies that the payer is responsible for paying the costs of a peer review and that a provider may bill a payer for time spent participating in a peer review. Outlines the components of an administrative peer review determination. Specifies that a party dissatisfied with an administrative peer review determination may request hearing before the ALJ division.

R20-5-1312. Hearing Process

R20-5-1312. Establishes the ALJ Fast Track Dispute Resolution Program and specifies the circumstances in which the program applies and the manner and timeline in which a case will be reviewed under the Fast Track Dispute Resolution Program.

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached

The rules reviewed are effective in achieving their respective objectives. The Commission has received 74 validated administrative peer review requests in the past five years. 43 payer determinations were upheld, 19 were fully overturned, and 12 were partially overturned. The Medical Resource Office has also assisted parties in resolving 47 disputes pertaining to medical treatment or services prior to administrative peer review. According to data from the National Council on Compensation Insurance, after the ODG formulary was adopted for chronic pain on October 1, 2016, all prescription drug utilization metrics decreased. Additionally, there was a decrease in the usage of non-recommended medications.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency

The rules reviewed are consistent with state statutes and other Commission rules, including Title 23, Chapter 6 of Arizona Revised Statutes and Arizona Administrative Code Title 20, Chapter 5, Articles 1, 2, 4-8, 10-13. There are no federal statutes or rules specific to administrative procedures related to Arizona workers' compensation claims.

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

The rules reviewed are enforced as written. The Commission is not aware of any problems with enforcement of the rules in Article 13.

6. **Clarity, conciseness, and understandability of the rules**

Excepted as noted below, the rules reviewed are clear, concise, and understandable:

R20-5-1301 – Subsection A should be amended to reflect the change in the name of the company that publishes the Official Disability Guidelines. The Official Disability Guidelines are now published by “MCG Health.”

R20-5-1311 – Subsection K should be amended to change “principle” to “principal” to be grammatically correct.

7. **Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report**

The Commission received written criticism on November 30, 2017 and February 16, 2018 from the Arizona Association of Lawyers for Injured Workers (attached). On February 23, 2018, the Commission responded to AALIW's concerns (attached). Since the Commission's 2018 rulemaking regarding Article 13, the Commission has not received any written criticisms of the Article 13 rules.

8. **A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules**

On July 8, 2016, the Governor's Regulatory Review Council reviewed an Economic Impact Statement (attached) concerning Article 13. The Commission has not undergone a more recent analysis of the economic, small business, and consumer impact and reports that the information contained in the 2016 EIS is still relevant. Since the adoption of the drug formulary there has been a 5% decrease in the price per prescription, and the average drug payment per active claim with at least one prescription drug has decreased 12% from 2016 through 2019. Between 2018 and 2019, the medical cost per lost time claim decreased by the largest amount since 2010.

9. **Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states**

No business competitiveness analysis has been submitted to the Commission regarding Article 13.

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

Not applicable. This is the first five-year review for Article 13.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated**

The probable benefits of the rules in Article 13 significantly outweigh the probable costs. In addition, the rules impose the least burden and costs on the regulated community.

12. **A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law**

The rules in Article 13 implement state law, specifically A.R.S. § 23-1062.03 and Laws 2017, Chapter 287, § 5. There is no corresponding federal law.

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

There are no rules in Article 13 that require issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Commission will address the minor issues discussed in Section 6, but proposes to include these amendments in the next substantive revision of Article 13. The Commission does not believe immediate rulemaking is necessary to alone address the minor issues discussed in Section 6.

Board of Directors
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Matthew Fendon, Secretary
Javier Grajeda, Treasurer
Karen Gianas
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November 30, 2017

Emailed: Kara.Dimas@azica.gov

Chairman Dale Schultz
Industrial Commission of Arizona
P.O. Box 19070
Phoenix, AZ 85005-9070

Re: Expanding the Occupational Disability Guidelines

Dear Chairman Schultz:

Attached please find AALIW's Response to the Industrial Commission of Arizona Regarding Expanding the Occupational Disability Guidelines for consideration at the November 30, 2017 ICA hearing.

Sincerely,

Briana Chua
President

Attachment

Cc: James Ashley, Director
Joseph Hennelly, Jr., Vice Chairman
Steven Krenzel, Commissioner
Scott LeMarr, Commissioner
Robin Orchard, Commissioner
The Honorable Steve Yarbrough, Senate President
The Honorable Speaker JD Mesnard, Speaker of the House
The Honorable Katie Hobbs, Senate Minority Leader
The Honorable Steve Farley, Ranking Democrat for the Senate Finance Committee
The Honorable Rebecca Rios, House Minority Leader
The Honorable Karen Fann, Senate Finance Committee Vice-Chair
The Honorable Steve Smith, Senate Commerce & Public Safety Chair
The Honorable Jeff Weninger, House Commerce Committee Chair
The Honorable Jay Lawrence, House Military, Veterans & Regulatory Affairs Committee Chair

The Honorable David Livingston, House Banking and Insurance Committee Chair
The Honorable David Farnsworth, Senate Insurance Committee Chair
The Honorable Athena Salman Ranking Democrat for the House Banking & Insurance Committee
The Honorable David Espinoza, Ranking Democrat for the House Commerce Committee
The Honorable Richard Andrade, Ranking Democrat for the House Military, Veterans & Regulatory Affairs Committee
The Honorable Robert Meza, Ranking Democrat for the Senate Commerce & Public Safety Committee



Protecting injured workers' rights

Response to the Industrial Commission of Arizona
Regarding Expanding the Occupational Disability Guidelines
by
Arizona Association of Lawyers for Injured Workers (AALIW)
November 30, 2017

BACKGROUND

The Industrial Commission of Arizona has scheduled a public hearing for November 30, 2017, regarding expanding the applicability of the Official Disability Guidelines beyond the management of chronic pain and the use of opioids for all stages of pain management. The ICA may modify or change the applicability of the guidelines if the evidence shows that the modification or change will meet all of these three conditions: “1) improve medical treatment for injured workers”, 2) make treatment and claims processing more efficient and cost effective, **and** 3) the guidelines adequately cover the body parts or conditions.” R20-5-1301 (C) (emphasis added).

AALIW's RESPONSE

Although we have read the press reports quoting a workers' compensation insurance carrier attorney as believing the expansion of the ODG is “going to happen”, we believe that any expansion of the ODG should not occur without a careful consideration of: 1) the facts about our Arizona workers' compensation system, and 2) evidence regarding how the one year experiment in using the ODG for management of chronic pain and the use of opioids has improved treatment for injured workers and made claims processing more efficient and cost effective.

- A. Important facts to remember about the Arizona workers' compensation system in considering the expansion of the ODG in Arizona.

Our state constitution mandates that our Workers' Compensation system protect injured workers and their families from burdensome and litigious remedies. Ariz. Const. Art. 18, Sec. 8. In exchange for paying an injured workers' medical bills and a portion of his/her lost wages, employers receive a huge benefit: immunity from personal injury lawsuits for that injury.

Arizona's workers' compensation system works and has not put an unfair cost burden on employers according to the data found in the ICA's 2016 annual report dated June 7, 2016: 1) Arizona's Premium Rate Index per \$100 of Payroll is the 15th lowest out of 51 jurisdictions (Report at 18), 2) Arizona's voluntary cumulative rate level change since October 2009 is - 14.0% (Report at 18), 3) Arizona's workers' compensation claims filed since FY 11/12 to FY 15/16 has dropped by nearly 8,000 claims (Report at 15), and 4) Arizona's frequency of lost time

claims per 100,000 workers is lower than our neighboring states of Colorado, Nevada, New Mexico and Utah (Report at 16).

B. There is insufficient evidence to justify expansion of ODG just one year after adopting it for management of chronic pain.

Does the ICA have data showing that the ICA's adoption of the ODG for the management of chronic pain and the use of opioids for pain management starting on October 1, 2016 has: a) improved medical treatment for injured workers, b) made treatment and claims processing more efficient, **and** c) made treatment and claims processing more cost effective? If so, we haven't seen that data; nor have we had a chance to analyze it.

We believe that the ICA should obtain such data and carefully consider it before expanding use of the ODG. If we are going to use evidence-based medicine to approve medical treatment, then the ICA should produce evidence that the one year experiment in using the ODG for pain management has met the goals the ICA has established for improving medical treatment for injured workers and making claims processing more efficient.

In considering whether the one year experiment in using the ODG for pain management has worked in reducing opioid use, the ICA must look at the data **before** October 1, 2016 to see how effective the laws passed originally in 2009 to limit the prescription of opioids (A.R.S. § 23-1062.02) were in limiting opioid use. The experience of our members is that ICA ALJ's were issuing awards limiting opioid use before the October 1, 2016 adoption of the ODG for chronic pain.

C. What have we learned over the past year from using the ODG for management of chronic pain?

The one year experiment in using the ODG for the management of chronic pain and the use of opioids for pain management has not made claims processing more efficient and cost effective because the ICA did not adopt "auto-authorization". The Work Loss Data Institute says the ODG reduces treatment delays because it ensures "providers know in advance which treatments will be approved without prior authorization, allowing them to treat quickly according to evidence-based guidelines." This is called "auto-authorization".

We don't have "auto-authorization in Arizona. When the ICA adopted rules for using the ODG for treatment of chronic pain, it allowed the carrier to deny ODG recommended treatment of chronic pain by obtaining a medical or psychological opinion that there is a "significant medical or psychological reason not to authorize" the treatment. R20-5-1304 (B). This means that health care providers of Arizona injured workers have no guarantee of payment for services that are allowed under the ODG. While pre-authorization of medical treatment is not required in Arizona, health care providers are reluctant to treat injured workers without knowing that they will be paid for their care. This causes delays in obtaining treatment.

It has not increased access to medical care. Our experience is that more doctors do not want to handle workers' compensation cases because of frustrations in dealing with carrier delays or denials of medical treatment and in being involved in the ensuing litigation.

D. There is not sufficient data to justify the expansion of ODG in Arizona at this time

There is insufficient data showing that the ICA's adoption of the ODG last year for the management of chronic pain has improved medical treatment for injured workers or made treatment and claims processing more efficient and effective.

Expansion of the ODG is not needed to return workers to work more quickly because as noted in the ICA's 2016 Annual Report Arizona's frequency of lost time claims per 100,000 workers is lower than our neighboring states of Colorado, Nevada, New Mexico and Utah. Report at 16. Expansion of the ODG is not needed to reduce workers' compensation premiums for employers because Arizona's Premium Rate Index per \$100 of Payroll is the 15th lowest out of 51 jurisdictions. Report at 18.

Our Arizona workers' compensation system is founded on a promise in our state constitution: in exchange for giving up the right to sue the employer for on the job injuries our Workers' Compensation system will protect injured workers and their families from burdensome and litigious remedies. Our state constitution further promises that compensation will not be reduced without a vote of the people.

In the rules it adopted last year, the ICA said it may modify or change the applicability of the guidelines if the evidence shows that the modification or change will meet all of these three conditions: "1) improve medical treatment for injured workers", 2) make treatment and claims processing more efficient and cost effective, **and** 3) the guidelines adequately cover the body parts or conditions." R20-5-1301 (C) (emphasis added). For the ICA to vote to expand the ODG one year later in the absence of such evidence violates not only that rule but also our state constitution's promise that our workers' compensation system will be fair to injured workers' and their families.

Board of Directors

Briana Chua, President
Matthew Fendon, Secretary
Javier Grajeda, Treasurer
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February 16, 2018

Emailed: Kara.dimas@azica.gov

Chairman Dale Schultz
Industrial Commission of Arizona
PO Box 19070
Phoenix AZ 85005-9070

RE: Physician input on ODG Expansion

Dear Chairman Schultz:

The Arizona Association of Lawyers for Injured Workers recently became aware of a situation with regard to the efforts of the ICA to obtain input on the extension of the ODG to other areas besides pain management that clearly discriminate against treating physicians in favor of independent medical examiners. Apparently, the ICA Medical Resource Officer, Jacqueline Kurth, sent a letter eliciting input predominantly from independent medical examiners. We are concerned that the results of this survey are skewed and do not reflect a clear, broad-based evaluation of an ODG extension.

When we became aware of this serious discriminatory deficiency, we contacted Ms. Kurth and asked if we could provide a list of doctors that treat a lot of injured workers since the treating physicians would be in the best position to explain how the ODG affects their treatment plans. She agreed to do so. The following business day, however, we received a voicemail from Ms. Kurth advising us that she had spoken with ICA Executive Director, James Ashley, and ICA Chief Legal Counsel, Jason Porter, who told her that it was too late to solicit any further input, and she was not to follow through on it.

We are terribly disappointed that the ICA would so cavalierly dismiss additional input from those physicians who would know best the impact an ODG extension would mean to treatment of their patients. In fact, we are amazed that the initial request for input would have been so limited.

This begs the question of whether the ICA has lost sight of their constitutional responsibility to protect injured workers and administer an unbiased system. It also suggests a predetermined agenda that works against the very workers they are obliged to constitutionally protect.

Opening up comment is essential in order to make a critical decision based on balanced, fair, and impartial information -- not selective, limited commentary that skews judgment in favor of what appears to be a preconceived direction.

Thank you very much for your prompt attention to this serious issue. We remain ready and willing to assist you in gathering the necessary information to make a fair and equitable decision.

Sincerely,



Briana Chua
President

Cc:

Governor Doug Ducey
James Ashley, Executive Director of the ICA
Joseph Hennelly, Jr., Vice Chairman
Steven Krenzel, Commissioner
Scott LeMarr, Commissioner
Robin Orchard, Commissioner
Jason Porter, Legal Counsel of the ICA
The Honorable Steve Yarbrough, President of the Senate
The Honorable JD Mesnard, Speaker of the House
The Honorable Katie Hobbs, Senate Minority Leader
The Honorable Rebecca Rios, House Minority Leader
The Honorable Karen Fann, Arizona State Senate
The Honorable David Livingston, Arizona House of Representatives

THE INDUSTRIAL COMMISSION OF ARIZONA



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February 23, 2018

Via: U.S. Mail and E-mail (briana@azilg.com)

Briana Chua
President, AALIW
P.O. Box. 2551
Phoenix, Arizona 85002-2551

Re: Physician Input on ODG Expansion

Dear Ms. Chua:

I am writing in response to your February 16, 2018 letter sent on behalf of the Arizona Association of Lawyers for Injured Workers (“AALIW”). Despite every opportunity to do so, AALIW did not raise any concerns about the medical specialists consulted by the Commission during the process of modifying the applicability of the Official Disability Guidelines. In light of AALIW’s extensive involvement in the process, I am surprised that AALIW now charges that the Commission had a “predetermined agenda.” It did not. And, as discussed more fully below, the Commission did not “discriminate against treating physicians” and has never “cavalierly dismissed” input from either AALIW or treating physicians. Instead, the Commission carefully reviewed feedback from 18 respected medical specialists, analyzed studies and data from a variety of states, and considered all stakeholder comments—including AALIW’s written and oral comments and comments submitted by additional treating physicians—before taking the formal actions authorized by A.A.C. R20-5-1301(C).

The Commission’s decisions are supported by compelling evidence and were intended to enhance the quality of health care for Arizona’s injured workers. It is counterproductive for AALIW to now publicly disparage the Commission when it had every opportunity to raise these issues *before* the Commission took formal action on December 21, 2017. Given the weight of evidence supporting broad-based use of evidence-based medicine, AALIW’s opposition and attempts to delay the benefits of evidence-based medicine for Arizona’s workers only begs the question of whether AALIW has lost sight of its stated mission to protect injured workers.

Before responding further, it is important to provide some historical context. In 2012, the Arizona Legislature directed the Commission to “develop and implement a process for the use of evidence-based treatment guidelines, where appropriate, to treat injured workers.” *See* A.R.S. § 23-1062.03. An Advisory Committee was created, which included five Arizona physicians

(Donald Dearth, Marjorie Eskay-Auerbach, Chris Laban, Bill Lewis, and Patricia Treharne) and two AALIW member-attorneys (Stephen Weiss and Dennis Kurth).

After years of study, debate, and consultation with a multidisciplinary panel of medical experts, the Advisory Committee unanimously recommended that the Commission adopt Work Loss Data Institute's *Official Disability Guidelines – Treatment in Workers Compensation* (the "Official Disability Guidelines") as the standard reference for evidence-based treatment guidelines. Messrs. Weiss and Kurth wrote to the Commission in December 2014, offering their "unequivocal[]" support of the "consensus result achieved" by the Advisory Committee and stating that the results were "particularly supportive of injured workers."

In 2015, the Commission initiated the rulemaking process to adopt the twelve rules now published in Title 20, Chapter 5, Article 13 of the Arizona Administrative Code. The proposed rules—which were primarily based on the consensus reached by the Advisory Committee—would formally adopt the Official Disability Guidelines and delineate a process for modifying or changing the applicability of the Guidelines. During the rulemaking process, the Commission extended its stakeholders (including AALIW members and Arizona physicians) the opportunity to comment on the proposed rules. AALIW submitted written comments in response to the proposed rulemaking on December 14, 2015, and participated in a public hearing on the matter.

The final rules permit the Commission to "modify or change the applicability of the guidelines" if the Commission determines that modification or changing the applicability of the guidelines will: (1) improve medical treatment for injured workers; (2) make treatment and claims processing more efficient and cost effective; and (3) the guidelines adequately cover the relevant body parts or conditions. *See* A.A.C. R20-5-1301(C). The final rules also require that the Commission provide an opportunity for public comment and hold a hearing before taking any action to modify the applicability of the Guidelines.

On June 29, 2017, the Commission directed its Medical Resource Office to conduct an investigation and study regarding the three modification criteria. The Medical Resource Office conducted its study without input or influence from the Commissioners. In addition to gathering published studies and data from other states related to the use of evidence-based treatment guidelines, the Medical Resource Office sought candid, unscripted feedback from eighteen highly-respected medical specialists in Arizona – ***seventeen of whom currently treat injured workers and one who treated injured workers before recently retiring.*** The medical specialists (who volunteered their time) were asked to address specific ODG sections corresponding with their specialty and answer the following questions:

- (1) Would adoption of the assigned section of ODG improve medical treatment for Arizona's injured workers?
- (2) Does the assigned section of ODG adequately cover the relevant body parts or conditions?

In the interest of transparency, the Commission publicly posted the eighteen physician reviews and relevant study materials on its website in October 2017.¹ On October 27, 2017, after posting the reviews and study materials, the Commission issued a “Notice of Public Hearing Under Arizona Administrative Code R20-5-1301(C) Regarding Expanded Applicability of the Official Disability Guidelines.”² The Notice explained that: (1) the study materials had been posted on the Commission’s website; (2) the record for oral and written comment was open; and (3) the Commission would hold a public hearing on November 30, 2017.

Commission stakeholders submitted nine written comments, eight of which supported expanding the applicability of the Official Disability Guidelines. One of the eight, Dr. Leon Ensalada, submitted a written comment offering his support, stating that “Arizona’s injured workers deserve treatments that are safe and effective based on the best and most up to date evidence.” AALIW submitted the one comment opposing expansion. Your submission did not, however, raise any concerns about the medical specialists who provided feedback to the Medical Resource Office.

During the November 30, 2017 public hearing, AALIW members Brian Clymer, Steve Weiss, Art Gage, Weston Montrose, and Debra Runbeck offered oral comments. Dr. Michael Lipton also attended the hearing and made oral comments. With the exceptions of Drs. Ensalada and Lipton, no other physician participated in the comment process. Ultimately, not a single comment (written or oral) took issue with the medical specialists from whom the Medical Resource Office requested feedback (which was not surprising, given the credentials and objectivity of these physicians).

On December 21, 2017, after careful review of the study materials and all stakeholder comments, the Commission determined at a public Commission meeting that modifying the applicability of the Official Disability Guidelines to cover all body parts and conditions would: (1) improve medical treatment for injured workers, and (2) make treatment and claims processing more efficient and cost effective. In addition, informed in part by the feedback from the eighteen medical specialists, the Commission determined that the Official Disability Guidelines adequately cover all body parts and conditions. Because these determinations met the requirements of R20-5-1301(C), the Commission unanimously voted to modify the applicability of the Official Disability Guidelines to cover all body parts and conditions, effective October 1, 2018. Although the Commission’s actions took place during an open meeting (with advance notice given), no AALIW members were in attendance.

The historical record belies many of the allegations contained in your letter. The record demonstrates that AALIW took an active role in the modification process, including by submitting written comments and speaking at the November 2017 public hearing. Neither AALIW, nor its member-attorneys, expressed dissatisfaction with the selection of the eighteen medical specialists prior to the Commission’s December 21, 2017 meeting. The Commission is very disappointed with the critical rhetoric and factual inaccuracies contained in your letter. Each of the medical specialists that provided feedback to the Medical Resource Office is a highly-credentialed, board-

¹ See <https://www.azica.gov/official-disability-guidelines-study-materials-and-public-comments>.

² See <https://www.azica.gov/sites/default/files/ODG%20Notice%20of%20Public%20Hearing%2011-30-2017.pdf>.

certified, well-respected medical specialist (who either currently treats injured workers or treated injured workers prior to retirement). The Commission carefully considered feedback provided by Drs. Ensalada and Lipton, neither of which had been asked to provide feedback to the Medical Resource Office. The Commission faithfully and transparently adhered to the process outlined in R20-5-1301(C). There is no justification for AALIW to wait until February 2017—two months after the process had been completed—to seek to expand upon the list of physicians selected to provide feedback to the Medical Resource Office. Moreover, Ms. Kurth disputes any suggestion that she agreed to your belated request.

The Commission values its stakeholders and welcomes information, comment, or recommendations from AALIW and the community of physicians that treat injured workers. The Commission strongly agrees with your statement that “[o]pening up comment is essential in order to make a critical decision based on balanced, fair, and impartial information.” This is precisely what the Commission did when it engaged in the modification process. And it is exactly what the Commission has done by including AALIW and Arizona physicians as active participants in the process over the last five years.

Sincerely,



Dale L. Schultz
Chairman
Industrial Commission of Arizona

cc: Governor Doug Ducey
The Honorable Steve Yarbrough, President of the Senate
The Honorable J.D. Mesnard, Speaker of the House
The Honorable Katie Hobbs, Senate Minority Leader
The Honorable Rebecca Rios, House Minority Leader
The Honorable Karen Fann, Arizona State Senate
The Honorable David Livingston, Arizona House of Representatives
James Ashley, ICA Director
Jason Porter, ICA Chief Counsel

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND
PROCEDURE; ARTICLE 13. TREATMENT GUIDELINES**

1. Identification of the proposed rulemaking:

In 2012, the Arizona Legislature directed the Industrial Commission of Arizona (the "Commission") to "develop and implement a process for the use of evidence-based treatment guidelines, where appropriate, to treat injured workers." See A.R.S. § 23-1062.03. With significant stakeholder input, the Commission promulgated twelve rules, published in Title 20, Chapter 5, Article 13 of the Arizona Administrative Code ("Article 13" or the "Treatment Guidelines"). Among other things, the Treatment Guidelines: (1) prescribe the use of evidence-based treatment guidelines as a tool to support clinical decision making and quality health care delivery to injured workers within Arizona's workers' compensation system; (2) adopted Work Loss Data Institute's *Official Disability Guidelines – Treatment in Workers Compensation* (the "*Official Disability Guidelines*") as the standard reference for evidence-based medicine; (3) until further action of the Commission, limited the applicability of the *Official Disability Guidelines* to the management of chronic pain and the use of opioids for all stages of pain management; (4) outlined an administrative process for the Commission to modify the applicability of the *Official Disability Guidelines*; (5) outlined a noncompulsory process for a medical provider or injured worker to seek preauthorization from a payer for medical services or treatment; (6) established an administrative review process to help resolve disputes between medical providers, injured workers, and payers; and (7) outlined procedures for bringing unresolved disputes to the Commission for administrative hearing.

Streamlining the Treatment Guidelines' Authorization Process

In 2017, the Arizona Legislature (in Laws 2017, Ch. 287, § 5) directed the Commission to "review and determine a process for streamlining the authorization process for treatment that is within the evidence-based treatment guidelines." The Legislature required the Commission to complete the review process on or before December 31, 2017.

Consequently, on June 29, 2017, the Commission directed its Medical Resource Office to: (1) conduct a review of the existing authorization process under the Treatment Guidelines; and (2) make a recommendation to the Commission regarding “streamlining the authorization process for treatment that is within the evidence-based treatment guidelines.” Stakeholders were provided opportunities to offer suggestions and comments regarding streamlining the authorization process, including during a public hearing conducted on August 17, 2017. At its December 14, 2017 public meeting, the Commission completed its review of the existing authorization process. Based upon suggestions submitted by interested stakeholders, the Commission approved the following methods for streamlining the Article 13 authorization process:

1. Develop and mandate the use of a Medical Treatment Preauthorization Form with accompanying instructions; and
2. Reduce the time period within which a payer must respond to requests for preauthorization or reconsideration from ten business days to seven business days.

Modifying the Applicability of the Official Disability Guidelines

In addition to efforts to streamline the Treatment Guidelines, the Commission carefully studied the propriety of modifying the applicability of the *Official Disability Guidelines* pursuant to A.R.S. § 23-1062.03 and A.A.C. R20-5-1301(C). Under A.A.C. R20-5-1301(B), absent further action of the Commission, the *Official Disability Guidelines* only applied to the management of chronic pain and the use of opioids for all stages of pain management. Under R20-5-1301(C), however, the Commission was authorized to “modify or change the applicability of the guidelines” if the Commission determined that modification or changing the applicability of the guidelines would: (1) improve medical treatment for injured workers; (2) make treatment and claims processing more efficient and cost effective; and (3) the guidelines adequately cover the relevant body parts or conditions.

On June 29, 2017, the Commission directed its Medical Resource Office to conduct an investigation and study regarding the three modification criteria. Consistent with the procedural requirements of R20-5-1301(C), the Commission publicly posted study materials and provided an opportunity for public comment. The Commission conducted a public hearing on November 30, 2017.

On December 21, 2017, following an evaluation of the study materials and stakeholder feedback, the Commission determined (at a public Commission meeting) that modifying the applicability of the *Official Disability Guidelines* to cover all body parts and conditions would improve medical treatment for injured workers and would make treatment and claims processing more efficient and cost effective. In addition, based upon written reviews received from board-certified physicians in Arizona (representing various specialties), the Commission determined that the *Official Disability Guidelines* adequately cover all body parts and conditions. Based on these determinations, the Commission took formal action to modify the applicability of the *Official Disability Guidelines* to all body parts and conditions, effective October 1, 2018.

The subject rulemaking described herein formalizes the Commission's actions, outlined above, and includes the following:

- Amends R20-5-106 (“Commission Forms”) to describe and mandate the use of the Medical Treatment Preauthorization Form.
- Amends R20-5-1301 (“Adoption and Applicability of the Article”) and R20-5-1311 (“Administrative Review by Commission”) to reflect the Commission’s December 21, 2017 decision to modify the applicability of the *Official Disability Guidelines* to apply to all body parts and conditions and to state applicable effective dates. (Note: This rulemaking is non- substantive, as the Commission already completed the substantive process for modifying the applicability of the Official Disability Guidelines under R20-5-1301(C).)
- Amends R20-5-1303 (“Provider Request for Preauthorization”); R20-5-1309 (“Payer Decision on Request for Preauthorization”); R20-5-1310 (“Payer Reconsideration on Request for Preauthorization”); and R20-5-1311 (“Administrative Review by Commission”) to: (1) mandate the use of the Medical Treatment Preauthorization Form; (2) reduce the time period for a payer to respond to a request for preauthorization or reconsideration from ten business days to seven business days; (3) remove pre-existing requirements for a request for preauthorization, a decision on a request for preauthorization, a decision on a request for reconsideration, and a request for administrative review; and (4) provide that a payer’s decision on a request for preauthorization or reconsideration may be

provided to the injured worker's authorized representative.

- Amends R20-5-1309 (“Provider Decision on Request for Preauthorization”) to require that a payer who receives a deficient request for preauthorization – either because it is incomplete or not submitted using the Medical Treatment Preauthorization Form – must, within seven business days of receiving and identifying the deficient request, either: (1) act on the deficient request by using the Medical Treatment Preauthorization Form; or (2) notify the provider making the request that a request for preauthorization must be submitted on the Medical Treatment Preauthorization Form.

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

Modifying the Applicability of the Official Disability Guidelines

The amendments related to modification of the applicability of the *Official Disability Guidelines* are non-substantive, as the rulemaking is merely intended to update Article 13 to reflect formal action taken by the Commission pursuant to A.A.C. R20-5-1301(C). Therefore, the subject rulemaking related to modification of the applicability of the *Official Disability Guidelines* creates no economic, small business, or consumer impact beyond that already created by Article 13 and the Commission's formal action taken on December 21, 2017.

Streamlining the Treatment Guidelines' Authorization Process

The Commission anticipates that the amendments related to streamlining the authorization process contained in Article 13 will impact participants in the workers' compensation system. Participants include injured employees who receive medical treatment and/or services related to industrial injuries, medical providers who treat injured workers, and payers (insurance carriers, self-insured employers, and the Commission's Special Fund) who administer workers' compensation claims. Although participants in the workers' compensation system are already subject to the Treatment Guidelines, the subject rulemaking includes the following:

- Mandates the use of the “Medical Treatment Preauthorization Form” (the “Form”) when a medical provider seeks preauthorization for medical treatment or services. Although preauthorization *is not required* under the Treatment Guidelines, *see*

A.A.C. R20-5-1303(A), a medical provider choosing to seek preauthorization will be required to use the Form, which will include fields for all necessary information. The Commission anticipates that the mandated Form will: (1) make it faster and easier for medical providers/injured employees to seek preauthorization, reconsideration, and/or Commission review; (2) streamline the preauthorization process by reducing the volume of deficient requests for preauthorization, reconsideration, or Commission review; (3) make it easier for payers to identify, and promptly act upon, requests for preauthorization and reconsideration; and (4) reduce unnecessary delays in providing injured employees with reasonably-required medical treatment.

- Reduces the time period for a payer to respond to a request for preauthorization or reconsideration from ten business days to seven business days. Although the condensed time period will require payers to process requests for preauthorization and reconsideration in a quicker manner (three days faster), the Commission anticipates that the condensed time period will: (1) reduce unnecessary delays in providing injured employees with reasonably-required medical treatment; and (2) streamline the preauthorization process by permitting interested parties to progress through the authorization process in an accelerated manner.
- Requires a payer who receives an incomplete request for preauthorization or a request for preauthorization that is not submitted on the Medical Treatment Preauthorization Form to, within seven business days of receiving and identifying the deficient request, either: (1) act on the deficient request by using the Medical Treatment Preauthorization Form; or (2) notify the provider making the request that a request for preauthorization must be submitted on the Medical Treatment Preauthorization Form. This amendment will offer payers necessary flexibility in acting upon deficient requests for preauthorization, while preventing deficient requests from being disregarded. The Commission anticipates that the amendment will ultimately: (1) reduce the volume of deficient requests for preauthorization; (2) reduce unnecessary delays in providing injured employees with reasonably-required medical treatment; and (3) improve the processing of workers' compensation claims.

In summary, the Commission anticipates that the amendments will primarily benefit participants in Arizona's workers' compensation system by streamlining the authorization process, reducing delays in providing injured employees with reasonably-required medical treatment, improving the processing of workers' compensation claims, and reducing litigation time and costs. The subject rulemaking will not result in any costs to injured employees.

3. A cost benefit analysis of the following:

- (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:

Modifying the Applicability of the Official Disability Guidelines

The amendments related to modification of the applicability of the *Official Disability Guidelines* are non-substantive, as the rulemaking is merely intended to update Article 13 to reflect formal action taken by the Commission pursuant to A.A.C. R20-5-1301(C). Therefore, the subject rulemaking related to modification of the applicability of the *Official Disability Guidelines* imposes no costs or benefits on state agencies beyond that already created by Article 13 and the Commission's formal action taken on December 21, 2017.

Streamlining the Treatment Guidelines' Authorization Process

As a self-insuring payer in Arizona's workers' compensation system, the State of Arizona (through the Arizona Department of Administration-Risk Management Division) will be subject to the costs and benefits of the rulemaking. *See supra* Section 2. Although the costs to the State of Arizona (through the Arizona Department of Administration-Risk Management Division) will not be significant, the Commission anticipates that the amendments will streamline the authorization process for medical services for state employees, reduce delays in providing state employees with reasonably-required medical treatment, improve the state's processing of workers' compensation claims, and reduce litigation time and costs. The Commission does not anticipate that the Arizona Department of Administration-Risk Management Division will need to hire any new full-time employees to implement the subject rulemaking.

(b) Costs and benefits to political subdivisions directly affected by the rulemaking; and

The proposed rulemaking directly applies to self-insuring political subdivisions. For further discussion regarding the anticipated costs and benefits to self-insuring payers in Arizona's workers' compensation system, *see supra* Sections 2 & 3(a).

(c) Costs and benefits to businesses directly affected by the rulemaking:

The proposed rulemaking directly applies to participants in the workers' compensation system, including medical providers who treat injured workers and payers (insurance carriers, self-insured employers, and the Commission's Special Fund) who administer workers' compensation claims. For further discussion regarding the anticipated costs and benefits to participants in Arizona's workers' compensation system, including medical providers or payers, *see supra* Section 2.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

The Commission does not anticipate that the subject rulemaking will have any direct impact on private and public employment in businesses, agencies, and political subdivisions.

5. Impact on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

The proposed rulemaking applies to all participants in the workers' compensation system, including medical providers who treat injured workers and payers (insurance carriers, self-insured employers, and the Commission's Special Fund) who administer workers' compensation claims. Although a small subset of these participants may operate small businesses, the subject rulemaking does not target small businesses.

(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 small businesses. Instead, the proposed rules are intended to streamline the Treatment Guidelines' preauthorization process for all participants. *See supra* Section 2.

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

The proposed rulemaking is not intended to impose new obligations, costs, or time constraints on small businesses. Instead, the proposed rules are intended to streamline the Treatment Guidelines' preauthorization process for all participants. *See supra* Section 2.

(d) Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

See supra Section 2 (discussing anticipated costs and benefits to participants in Arizona's workers' compensation system).

6. Probable effect on state revenues:

The Commission does not anticipate that the proposed rules will have any direct effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

Because the subject rulemaking will primarily benefit participants in Arizona's workers' compensation system, the Commission did not consider less costly alternative methods. *See supra* Section 2.

8. Data on which the rule is based:

Modifying the Applicability of the Official Disability Guidelines

The subject rulemaking related to the *Official Disability Guidelines* is merely intended to update Article 13 to reflect the formal action taken by the Commission on December 21, 2017, pursuant to A.A.C. R20-5-1301(C). Consequently, the Commission has not reviewed and is not relying upon any data or study in its evaluation of or justification for the subject rulemaking as it related to modifying the applicability to the *Official Disability Guidelines*.

As concerns the Commission's December 21, 2017 action, the Commission considered various study materials prior to completing the regulatory process for modifying the applicability of the Official Disability Guidelines. The study materials considered by the Commission during the administrative process are available at <https://www.azica.gov/official-disability-guidelines-study-materials-and-public-comments>. The study materials are also available for inspection or reproduction at the Industrial Commission of Arizona, Medical Resource Office, 800 West Washington Street, Phoenix, Arizona 85007.

Streamlining the Treatment Guidelines' Authorization Process

The Commission has not reviewed and is not relying upon any data or study in its evaluation of or justification for the subject rulemaking relating to streamlining the Treatment Guidelines' authorization process.

RULES REVIEWED

ARTICLE 13. TREATMENT GUIDELINES

R20-5-1301. Adoption and Applicability of the Article

A. The Industrial Commission of Arizona (Commission) has adopted the Work Loss Data Institute's Official Disability Guidelines – Treatment in Workers Compensation (ODG) as the standard reference for evidence-based medicine used in treating injured workers within the context of Arizona's workers' compensation system. By adopting and referencing the most recent edition (at the time of treatment), and continuously updated Official Disability Guidelines, the Commission can ensure the latest available medical evidence is used in making medical treatment decisions for injured workers.

B. Until further action of the Commission, the guidelines shall apply to all body parts and conditions.

C. The Commission may modify or change the applicability of the guidelines as described in subsection (B) if the Commission determines that modification or changing the applicability of the guidelines will: 1) improve medical treatment for injured workers, 2) make treatment and claims processing more efficient and cost effective, and 3) if the Commission's modification expands the applicability of the guidelines, the guidelines adequately cover the relevant body parts or conditions. Before taking action to modify or change the applicability of the guidelines, the Commission shall provide an opportunity for public comment and hold a public hearing. A decision of the Commission under this subsection shall be made by a majority vote of a quorum of Commission members present at a public meeting.

D. Action taken by the Commission to modify or change the applicability of the guidelines under subsection (C) shall be published in the minutes of the Commission meeting when such action was taken. The minutes of this action shall be published on the Commission's website and shall be available from the Commission upon request.

E. The guidelines shall apply prospectively. Recommendations provided in the guidelines related to the management of chronic pain and the use of opioids for all stages of pain management shall apply to medical treatment or services occurring on or after October 1, 2016. For purposes of this process, chronic pain shall be defined by the guidelines. Recommendations provided in the guidelines related to all other body parts and conditions shall apply to medical treatment or services occurring on or after October 1, 2018.

F. This Article applies to all claims filed with the Commission.

G. This Article only applies to medical treatment and services for body parts and conditions that have been accepted as compensable.

H. The guidelines are to be used as a tool to support clinical decision making and quality health care delivery to injured employees. The guidelines set forth care that is generally considered reasonable and are presumed correct if the guidelines provide recommendations related to the requested treatment or service. This is a rebuttable presumption and reasonable medical care may

include deviations from the guidelines. To support a request to deviate from the guidelines, the provider must produce documentation and justification that demonstrates by a preponderance of credible medical evidence a medical basis for departing from the guidelines. Credible medical evidence may include clinical expertise and judgment.

I. The Commission shall provide administrative review and oversight of this Article.

R20-5-1302. Definitions

In this Article and R20-5-106(A)(12), unless the context otherwise requires:

“Act” means the Arizona Workers’ Compensation Act, A.R.S. Title 23, Chapter 6.

“Active Practice” means performing patient care for a minimum of eight hours per week in one of the five preceding years.

“Administrative Law Judge” or “ALJ” means a hearing officer appointed under A.R.S. § 23-108.02.

“Administrative Review” means a process that includes a peer review for preauthorization of a request for medical treatment or services conducted pursuant to R20-5-1311. The administrative review process will be managed by the Medical Resource Office (MRO) at the Industrial Commission of Arizona.

“American Board of Medical Specialties” means the organization that develops a uniform system for specialty boards to administer examinations for certification of physicians within specific medicine specialties.

“American Osteopathic Association” means the organization that develops a uniform system for specialty boards to administer examinations for certification of osteopathic physicians within specific osteopathic medicine specialties.

“Applicability” means the body parts and medical conditions that are covered under this Article and authorized by the Commission under R20-5-1301(B) and (C).

“Claim” means the workers’ compensation claim filed by the injured employee under the Act.

“Contractor” means an independent peer review organization accredited by URAC.

“Fast Track ALJ Dispute Resolution Program” or “fast track process” means the voluntary dispute resolution process set forth in R20-5-1312(B).

“International Classification of Diseases Code” or “ICD Code” means a set of medical diagnostic codes that creates a universal language for reporting diseases and injury.

“International Classification of Diseases” or “ICD” means an official list of categories of diseases, physical and mental, that is issued and maintained by the World Health Organization.

“IME” means an independent medical examination scheduled under R20-5-114.

“Injured Employee” means a person defined in A.R.S. § 23-901 whose claim has been accepted for workers’ compensation benefits.

“Medical File Review Opinions” means a formal examination of patient data and medical records for the purpose of determining the need for medical treatment, services or both.

“Payer” means an insurance carrier defined under A.R.S. § 23-901, a self-insured employer

defined in R20-5-102, a third-party administrator, and the Special Fund of the Industrial Commission of Arizona.

“Peer Review” means an independent medical review conducted by an individual meeting the requirements of R20-5-1311(I).

“Preauthorization” means the written request prescribed by R20-5-1303 from a provider to a payer requesting approval to provide medical treatment or services to an injured employee.

“Provider” means a physician as defined in R20-5-102.

“Reconsideration” means a written request to the payer or identified review organization by an injured employee or medical provider to reconsider a previous payer decision to deny medical treatment or services and that identifies the specific justification to support the request.

“Third-Party Administrator” means an organization that processes insurance or employee benefit claims for a separate entity

“Treatment Guidelines” or “guidelines” means medical treatment guidelines that are used as a tool to support clinical decision making and quality health care delivery to injured employees.

“URAC” refers to URAC, a non-profit organization formerly known as the Utilization Review Accreditation Commission.

R20-5-1303. Provider Request for Preauthorization

A. No preauthorization is required under the Act to ensure payment for reasonably required medical treatment or services. While preauthorization is not required under the Act, a provider may seek preauthorization as provided in this subsection.

B. A provider shall submit a request for preauthorization in writing using Section I (Provider Request for Preauthorization) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12). A provider shall attach documentation to a request for preauthorization that supports the medical necessity and appropriateness of the treatment or services requested, such as office notes and diagnostic reports.

C. A provider may submit the request for preauthorization by mail, electronically or by fax.

R20-5-1304. Payer Denial of Request for Preauthorization

A. A payer shall not deny a request for preauthorization solely because the guidelines do not address the requested treatment or services.

B. A payer shall not deny a request for preauthorization that is supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a contraindication or significant medical or psychological reason not to authorize the requested treatment or services. Upon request by the provider or injured employee, a denial of preauthorization in this situation shall be processed as an immediate referral to the Commission for administrative review as provided in R20-5-1311 unless the payer obtains an IME in support of its denial. If the payer obtains an IME which serves as the basis for the denial, then review of the payer’s decision shall be processed as a request for investigation under A.R.S. § 23-1061(J) if filed by the injured employee.

R20-5-1305. Payer Denial of Payment for Provided Treatment or Services

A. A payer shall not deny payment for provided treatment or services solely because the guidelines do not address the requested treatment or services.

B. A payer shall not deny payment for provided treatment or services supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a medical contraindication or significant medical or psychological reason not to pay for the treatment or services.

C. A dispute related to a payer's failure to pay for provided treatment or services may be processed as a request for investigation under A.R.S. § 23-1061(J) if filed by an injured employee.

R20-5-1306. Payer Reversal of Decision to Deny Treatment or Services

A payer may reverse its decision to deny treatment or services at any time throughout the process described in this Article. In this situation, the payer's subsequent authorization or agreement to pay for the treatment or services at issue shall end this process.

R20-5-1307. Payer Decision, In Whole or In Part

A payer may issue a decision approving or denying a request for preauthorization in whole, or in part.

R20-5-1308. Failure to Comply with Required Time Limits

A payer's failure to comply with the required time limits of this process may be considered unreasonable delay under R20-5-163.

R20-5-1309. Payer Decision on Request for Preauthorization

A. Except as provided in subsections (C) or (D), a payer shall communicate to the provider its decision on a request for preauthorization no later than 7 business days after the request is received. The decision shall be issued in writing using Section II (Payer Decision on Request for Preauthorization) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12). A payer shall attach to the decision a statement of what has been authorized, including, if applicable, a partial authorization, and, if the request for preauthorization is denied, in whole or in part, a statement of explanation that includes the medical reason supporting the payer's decision. For purposes of this Section, the 7 business days begin to run the day after the payer receives the request.

B. If a payer fails to communicate to a provider its decision on request for preauthorization within 7 business days, then the payer's failure to take action is deemed a "no response" and the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1311.

C. If a payer receives a request for preauthorization not submitted on Section I (Provider Request for Preauthorization) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12) or an incomplete request for preauthorization using Section I (Provider Request for Preauthorization) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5- 106(A)(12), the payer shall:

1. No later than 7 business days after the request is received and identified, act on the request for preauthorization pursuant to subsection (A); or
2. No later than 7 business days after the request is received and identified, notify the provider in writing that the request for preauthorization is incomplete or, if applicable, that a request for preauthorization must be submitted on Section I (Provider Request for Preauthorization) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12).

D. If, no later than 7 business days after a request for preauthorization has been received, a payer provides written notice to the provider that an IME has been requested under R20-5-114 using Section II (Payer Decision on Request for Preauthorization) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12), then the payer's decision on a request for preauthorization shall be issued no later than 7 business days after the final IME report has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the IME report.

E. Unless the payer decision was supported by an IME or otherwise falls within subsection R20-5-1304(B), an injured employee or provider may seek reconsideration of a payer decision by submitting a written request to the payer (or review organization identified by the payer) using Section III (Provider or Employee Request for Reconsideration) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12). A provider shall attach to a request for reconsideration a statement of the specific reasons and justifications to support the request. If not previously provided, the injured employee or provider shall attach supporting medical documentation with the request for reconsideration.

F. An injured employee may seek review of a payer decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).

G. Unless the decision was supported by an IME, an injured employee or provider may seek review of a payer decision issued under R20-5-1304(B) by requesting administrative review by the Commission as provided in R20-5-1311.

H. A payer shall provide a copy of its written decision to deny treatment or services to the injured employee or, if represented, to the injured employee's authorized representative.

R20-5-1310. Payer Reconsideration on Request for Preauthorization

A. Except as provided in subsection (C), a payer shall communicate to the provider its decision on a request for reconsideration no later than 7 business days after the request is received. This decision shall be issued in writing using Section IV (Payer Decision on Request for

Reconsideration) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12). A payer shall attach to the decision a statement of what has been authorized, including, if applicable, a partial authorization, and, if the request for preauthorization is denied, in whole or in part, a statement of explanation that includes the medical reason supporting the payer's decision. For purposes of this subsection, the 7 business days begin to run the day after the payer receives the request for reconsideration.

B. If a payer fails to respond to a request for reconsideration within 7 business days, the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1311.

C. If, no later than 7 business days after a request for reconsideration has been received, a payer provides written notice to the provider that an IME has been requested under R20-5-114 using Section IV (Payer Decision on Request for Reconsideration) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12), then the payer's decision on a request for reconsideration shall be issued no later than 7 business days after the final IME report has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the report.

D. Commission Review of Payer Reconsideration Decision:

1. An injured employee or provider may seek review of a payer reconsideration decision by requesting an administrative review by the Commission as provided in R20-5-1311 unless the payer decision was supported by an IME.

2. An injured employee may seek review of a payer reconsideration decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).

E. A payer shall provide a copy of its written reconsideration decision to deny treatment or services to the injured employee or, if represented, to the injured employee's authorized representative.

R20-5-1311. Administrative Review by Commission

A. Absent further action of the Commission under R20-5-1301(C), administrative review under this Article is available for requests for medical treatment or services related to all body parts and conditions.

B. A request for administrative review shall be in writing using Section V (Provider or Employee Request for Administrative Peer Review) of the Medical Treatment Preauthorization Form approved by the Commission under R20-5-106(A)(12). A request for administrative review must attach copies of relevant medical information or records and copies of all documentation related to the payer's decision or non-response. A request for administrative review must be submitted to the Commission by mail, electronically or by fax.

C. Upon receipt of a request for administrative review, the Commission shall determine whether the administrative review is available under this Article.

1. If administrative review is not available, then no later than three business days after receiving a request for administrative review, the Commission shall send notice to the injured employee and payer that administrative review is not available.

2. If administrative review is available, then no later than three business days after receiving the request, the Commission shall send notice to the payer that a request for administrative review has been received and provide information on how to participate in the process.

D. The administrative review conducted under this Section shall apply the guidelines as described in this Article and include a peer review performed by an individual meeting the requirements of subsection (I). The peer review shall consist of a records review and, when possible as described in subsection (I)(5), a conversation between the provider and individual conducting the peer review.

E. The Commission may enter into an agreement with one or more contractors, who shall be URAC accredited, to provide the review described in subsection (D).

F. The payer shall pay for the costs of the peer review conducted by the contractor.

G. To assist in its review, the Commission or its contractor may request or receive additional information and documentation from the provider, injured employee or payer, who shall cooperate and provide the Commission or its contractor with any necessary medical information, including information pertaining to the payer's decision.

H. Before the Commission or its contractor issues a determination denying the request for treatment or services, a good faith effort shall be made to conduct a peer review with the provider requesting authorization to perform the treatment or services.

I. The individual conducting the peer review shall:

1. Hold an active, unrestricted license or certification to practice medicine or a health profession and be involved in the active practice of medicine or a health profession during the five preceding years. For purposes of this subsection, "active practice" means performing patient care for a minimum of eight hours per week in one of the five preceding years;

2. Be licensed in Arizona, unless the Commission or its contractor is unable to find such an individual, in which case the peer review may be conducted by an individual who is licensed in another state of the United States and who meets the other requirements of this subsection;

3. For a review of a request from an allopathic or osteopathic physician, nurse practitioner, physician assistant, or other mid-level provider, hold a current certification from the American Board of Medical Specialties or the American Osteopathic Association in the area or areas appropriate to the condition, procedure or treatment under review;

4. Be in the same profession and the same specialty or subspecialty as typically performs or prescribes the medical procedure or treatment requested; and

5. Make a good faith effort to contact the provider requesting the preauthorization. This good faith effort shall include making telephone contact during the provider's normal business hours and offering to schedule the peer review at a time convenient for the provider.

J. A provider may bill the payer for time spent participating in a peer review under this Section.

K. The Commission or its contractor shall issue a written determination of its administrative review that contains the name and title of the person that performed the administrative review, and includes the following information:

1. Whether the request for treatment or services is authorized or denied, in whole or in part;
2. The information reviewed;
3. The principle reason for the decision; and
4. The clinical basis and rationale for the decision.

L. An interested party dissatisfied with the administrative review determination may request that the dispute be referred to the Commission's Administrative Law Judge Division for hearing. This request for hearing shall:

1. Be in writing;
2. Filed no later than 10 business days after the administrative review determination is issued; and
3. State whether the party requests to participate in the Fast Track ALJ Dispute Resolution Program by stipulation, or declines to participate in the Fast Track ALJ Dispute Resolution Program.

M. If a timely request for hearing is filed, the administrative review determination is deemed null and void and shall serve no evidentiary purpose.

N. The information provided by the parties under this Section and the determination issued by the Commission shall become a part of the Commission claims file for the injured employee.

R20-5-1312. Hearing Process

A. A referral of a request for hearing under R20-5-1311(L) shall be processed as provided for in the Act unless all parties agree to participate in the fast track process.

B. The following applies only to the Fast Track ALJ Dispute Resolution Program:

1. Parties must agree to participate in the Fast Track ALJ Dispute Resolution Program with the understanding that a short form decision will be issued.

2. Review by the presiding ALJ shall be limited to the treatment or service dispute considered at the administrative review under R20-5-1311.
3. The presiding ALJ shall issue a notice of hearing within 10 business days of the receipt of the fully executed agreement to participate and certificate of readiness.
4. The hearing shall be held within 30 calendar days from the day that the notice of hearing is issued to the extent practicable.
5. Discovery is limited to five interrogatories and no depositions are permitted.
6. The presiding ALJ shall take all lay witness testimony at the time of the hearing and will not hold any further hearings.
7. The presiding ALJ shall consider documentary medical evidence only; no medical testimony shall be taken.
8. Medical file review opinions shall be deemed to constitute substantial evidence to support the requested treatment or service.
9. All documentary evidence shall be submitted no later than 10 business days before the scheduled hearing.
10. The hearing shall be recorded, but not transcribed, unless one or more of the parties files a request for review under A.R.S. § 23-942 and A.R.S. § 23-943.
11. The presiding ALJ shall issue a short form decision within five business days after the matter is deemed submitted.

**GENERAL
AND
SPECIFIC
STATUTES**

A.R.S. § 23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

A.R.S. § 23-108.03. Performance of certain powers and duties

A. The industrial commission shall be responsible for determining the policy of the commission.

B. Any powers and duties prescribed by law to the commission in this chapter and chapters 2 and 6 of this title, whether ministerial or discretionary, may by resolution be delegated by the commission to the director or any of its department heads or assistants, provided, that the commission shall not delegate its power or duty to:

1. Make rules and regulations.

2. Commute awards to a lump sum.

3. License self-insurers.

C. The commission shall be responsible for the official acts of its employees acting in the name of the commission and by its delegated authority.

A.R.S. § 23-921. Administration of chapter

A. The industrial commission of Arizona is charged with the duties of the administration of this chapter, and with the adjudication of claims for compensation arising out of provisions of this chapter and any of its members or assistants so authorized may:

1. Hold hearings at any place within the state or without the state by agreement of the parties.

2. Administer oaths.

3. Issue and serve by the commission's representatives, or by any sheriff, subpoenas for the attendance of witnesses and claimants and the production of reports, papers, contracts, books, accounts, documents and testimony. The commission may require the attendance and testimony of employers, their officers and representatives before any proceeding of the commission, and the production by employees of books, records, papers and documents.

4. Generally provide for the taking of testimony and for the recording of proceedings held in accordance with this chapter.

B. The commission may make and declare all rules and regulations which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings. Such rules and regulations may provide for informal prehearing conferences in order to expedite claim adjudication, amicably dispose of controversies, narrow issues and simplify the method of proof at hearings.

C. The commission may incur such expenses as it determines are reasonably necessary to perform its authorized functions, which expenses shall be a charge against the administrative fund.

D. The commission may charge any person with contempt who refuses to comply with any order of the commission, upon application to the superior court. Any person held in contempt may be punished by a fine of not to exceed one thousand dollars.

A.R.S. § 41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.
8. If applicable, that the agency completed the previous five-year review process.

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

10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.

2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.

3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.

4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.

5. Is not clear, concise and understandable.

6. Does not use general permits if required under section 41-1037.

7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.

8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.
3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

A.R.S. § 41-1057. Exemptions

A. In addition to the exemptions stated in section 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.
2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.
3. The industrial commission of Arizona when incorporating by reference the federal occupational safety and health standards as published in 29 Code of Federal Regulations parts 1904, 1910, 1926 and 1928.
4. The Arizona state lottery if making rules that relate only to the design, operation or prize structure of a lottery game.

B. An agency exempt under subsection A of this section may elect to follow the requirements of this article instead of section 41-1044 for a particular rule making. The agency shall include with a final rule making filed with council a statement that the agency has elected to follow the requirements of this article.

GAME AND FISH COMMISSION

Title 12, Chapter 4, Article 9



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2022

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

FROM: Council Staff

DATE: March 10, 2022

SUBJECT: GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 9, Aquatic Invasive Species

Summary

This Five Year Review Report (5YRR) from the Game and Fish Commission (Commission) relates to rules in Title 12, Chapter 4, Article 9, regarding Aquatic Invasive Species. The two rules under review, R12-4-901 (Definitions) and R12-4-902 (Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols), are meant to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. The Commission states that this is accomplished through established protocols that are based on the length of time in affected waters.

In the previous 5YRR for these rules, which the Council approved in March 2017, the Commission stated that it would address issues identified in that report by December 2017. In this 5YRR, the Commission indicates that it completed the prior proposed course of action through expedited rulemaking, which the Council approved in February 2018. In that expedited rulemaking, the Commission renumbered the rules from Title 12, Chapter 4, Article 11 to Article 9.

Proposed Action

The Commission does not propose to take any action on these rules.

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

Yes. The Commission cites both general and specific statutory authority for the rules under review.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

In the original Economic, Small Business, and Consumer Impact Statement (EIS) for these rules, the Commission anticipated the amendments would have an insignificant impact on regulated persons. The Commission indicates that the economic impact of the rules does not differ significantly from what it determined in the original EIS.

The rules were created to prevent the unrestricted spread of invasive aquatic species, which can have financial and ecological impacts on all Arizonans. The stakeholders include: the general public, watercraft operators and owners, and the Commission.

In the original EIS, the Commission determined that the amendments benefit private consumers and public and private entities by addressing a current threat to Arizona's economy, ecology, and public health and safety. The Commission noted that the amendments have little or no financial effect on most watercraft owners and operators. The Commission anticipated increased costs associated with implementing the amended rules due to increased training of enforcement officers.

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

The Department states that the probable benefits of the rules outweigh the probable costs of the rules, and they impose the least burden to achieve the underlying regulatory objective. The benefit to the public by addressing a substantial threat to public health and safety outweighs the cost of the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Commission did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

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

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

Yes. The Commission indicates that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Commission states that the rules are effective in achieving their objectives.

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

Yes. The Commission states that the rules are enforced as written.

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

The Commission states that the rules are based on state law and that federal law is not directly applicable to these rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

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

11. **Conclusion**

Council staff finds that the Commission submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



January 24, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Madam Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Five-year-Review Report: 12 A.A.C. 4, Article 9. Aquatic Invasive Species

Dear Ms Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Game and Fish Commission for 12 A.A.C. 4, Article 9. Aquatic Invasive Species which is due on January 31, 2022.

The Arizona Game and Fish Commission hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Celeste Cook at (623) 236-7390 or at CCook@azgfd.gov.

Sincerely,

A handwritten signature in cursive script that reads "Ty E. Gray".

Ty E. Gray
Director

**ARIZONA GAME AND FISH
COMMISSION
2022 FIVE-YEAR REVIEW REPORT**

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 9. AQUATIC INVASIVE SPECIES**



Prepared for the Governor's Regulatory
Review Council

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 9. AQUATIC INVASIVE SPECIES
FIVE-YEAR REVIEW REPORT

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statutes: A.R.S. §§ 17-231(B)(2), 17-255, 17-255.01, 17-255.02, 17-255.03, and 17-255.04

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

For R12-4-901. Definitions, the objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 9. The rule was adopted to facilitate consistent interpretation of the Commission's Article 9 rules.

For R12-4-902. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols, the objective is to establish the requirements necessary to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. The rule was adopted to enable the Department to establish prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols.

Aquatic invasive species are a threat to Arizona's water and electrical infrastructure and the public's angling and boating recreation. It is critical for anyone who owns or uses watercraft, vehicle, conveyance or equipment on Arizona's waterbodies, to understand the essential nature of the aquatic invasive species containment effort by the Department. The spread of aquatic invasive species will result in far-reaching impacts that can touch virtually every resident of Arizona. For example, quagga mussels have a negative ecological and environmental impact on Arizona waterways and water delivery systems. These mussels accumulate on underwater surfaces and impair water delivery structures and systems. They clog water intake and delivery pipes and infest hydropower infrastructure, dams, and water control structures. They adhere to watercraft bottoms, engines, docks, and pilings and can ultimately destroy beaches and alter the functioning of native aquatic ecosystems.

The unrestricted spread of aquatic invasive species has far-reaching financial and ecological impacts that can affect virtually every Arizona resident. These species cost millions of dollars annually to control. Congressional researchers estimated that from 1993 to 1999, zebra mussels alone cost the power industry \$3.1 billion and industries, businesses, and communities more than \$5 billion. California spends well over \$1.5 million annually to hyperchlorinate water and remove dead mussels from water delivery systems.

The principle pathway for aquatic invasive species transfer between watersheds is the overland movement of boats and equipment with attached adult mussels and the movement of water itself containing juvenile mussels

in un-drained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. The initial movement of these mussels to the Colorado River was in all likelihood as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland. Aquatic invasive species are currently established in a number of waterbodies: Apache Lake, Canyon Lake, Lake Pleasant, Lake Havasu, Lake Mead, Lake Mohave, Martinez Lake, Mittry Lake, Topock Marsh, and Lake Powell; water delivery systems: parts of the Central Arizona Project aqueduct and Salt River Project Canal System; and other states and countries: Alabama, Arkansas, California, Colorado, Connecticut, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Vermont, Wisconsin, West Virginia; and the Provinces of Ontario and Quebec.

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

At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments from the public in regard to the rule. The Department believes this data indicates the rules appear to be effective in achieving the objective stated above.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with and are not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

For R12-4-901. Definitions, enforcement of the rule manifests itself through proper administration. Enforcement is directed to a rule or an order in which a definition is used. It is not the term that is cited, but the violation.

For R12-4-902 Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols, the rule is intended to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. This is accomplished through established protocols that are based of length of time in affected waters. Compliance may be achieved by removing drain plugs and/or allowing the watercraft, vehicles, conveyances, and equipment to simply dry out.

Overall, the rule is enforced as written and to the extent that the Department is aware, there have been no problems

with enforcement of the rules.

Since the last rule review, Department law enforcement officers have issued 36 citations and 13 warnings to persons for violating aquatic invasive species statute and rule.

Through Creel Surveys and officer contacts, the Department has determined the main reason for noncompliance is a lack of understanding as to how aquatic invasive species are transported from affected waters. While 84 to 97% of boat anglers were aware of aquatic invasive species protocols and the need to follow them when and after leaving an affected waterbody, only 40 to 67% of shore anglers were aware of aquatic invasive species protocols and the need to follow them when and after leaving an affected waterbody and approximately 22% of those shore anglers did not believe they could transport aquatic invasive species on their fishing equipment (tackle boxes, fishing lures and flies, reels, waders, nets, etc).

6. Clarity, conciseness, and understandability of the rule.

The rules are clear, concise, and understandable.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

The Department has not received any written criticisms of the rules.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The Commission anticipated the amendments would have an insignificant impact on persons regulated by the rule. However, establishing conditions for the overland movement of watercraft, vehicles, conveyances, and equipment is crucial in helping to prevent the accidental spread of aquatic invasive species and the far-reaching financial and ecological impacts that can affect virtually every Arizona resident and water storage, treatment, and delivery provider. The Commission anticipated the amendments would benefit private consumers and both public and private entities by addressing a current threat to the state's economy, ecology, and public health and safety. The Commission anticipated the amendments would have little or no financial effect on most watercraft owners

and operators. The Commission anticipated increased costs associated with implementing the amended rules due to increased training of enforcement officers. The Commission determined the benefits of the rulemaking outweighed any costs.

It is important to note, the Department offers watercraft inspection and decontamination services through Department facilities and contracted vendors at no cost to the watercraft owner. Watercraft owners are also given the option of taking their watercraft to an authorized agent who will charge the owner a fee to decontaminate their watercraft.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Permission to pursue exempt rulemaking granted: May 1, 2017
- Notice of Rulemaking Docket Opening approved by the Commission: September 8, 2017
- Notice of Proposed Expedited Rulemaking approved by the Commission: September 8, 2017
- Public Comment Period: September 22 through October 22, 2017
- Notice of Final Expedited Rulemaking approved by the Commission: December 1, 2017
- Notice of Final Expedited Rulemaking approved by the Governor's Regulatory Review Council: January 30, 2018

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

An aquatic invasive species is defined as any non-native species to the ecosystem under consideration whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Aquatic invasive species, such as those listed in Director's Order #1, currently pose a threat to public health and safety in Arizona because of their potential to contaminate state waterways. Aquatic invasive species are currently established in a number of waterbodies. Establishment of decontamination procedures in rule is necessary to fully implement aquatic invasive species statutes and guide the public's expectations regarding actions that may be mandatory on their part.

Upholding mandatory conditions for movement of boats and aquatic equipment to and from waters and locations in this state is essential in preventing the spread of aquatic invasive species to unaffected water bodies and the financial, economic, and ecological costs that will accompany them. These conditions are crucial in helping to prevent the accidental movement of aquatic invasive species to unaffected water bodies and must be specified in rule.

It is important to note, the Department offers watercraft inspection and decontamination services through Department facilities and contracted vendors at no cost to the watercraft owner. Watercraft owners are also given the option of taking their watercraft to an authorized agent who will charge the owner a fee to decontaminate their watercraft.

In addition to the rules, the Department conducts educational outreach activities designed to let the public know what they can do to help prevent the accidental movement of aquatic invasive species to unaffected water bodies. Outreach efforts include internet pages devoted to aquatic invasive species information, radio commercials, boating education programs (over 36,000 attendees since January 2017), brochures, creel surveys, fishing clinics, law enforcement contacts, bill boards, and on-site signage.

These rules benefit the public by addressing a substantial threat to public health and safety. The citizens of Arizona benefit from rules designed to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through the state.

The Department has determined that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The rules are based on state law and federal law is not directly applicable to the rules.

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

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

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend

or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION RULES
ARTICLE 9. AQUATIC INVASIVE SPECIES

R12-4-901. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

“Aquatic invasive species” means those species listed in Director’s Order 1.

“Certified agent” means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

“Conveyance” means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

“Equipment” means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

“Operator” means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

“Owner” means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

“Person” has the same meaning as defined under A.R.S. § 1-215.

“Release” means to place, plant, or cause to be placed or planted in waters.

“Transporter” means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

“Waters” means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(2), 17-255, 17-255.01, 17-255.02, 17-255.03, and 17-255.04

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-901 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2). New Section R12-4-901 renumbered from R12-4-1101 by final expedited rulemaking at 24 A.A.R. 407, effective February 6, 2018 (Supp. 18-1)

R12-4-902. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

A. A person shall not, unless authorized under Article 4:

1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.

3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.
- B.** Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director’s Order 2 and prior to transport, a person shall:
1. Remove all clinging materials such as plants, animals, and mud.
 2. Remove all plugs and other valves or devices that prevent water drainage from all compartments that may retain water, such as ballast tanks, ballast bags, bilges, and ensure plugs or devices remain removed or open during transport.
 3. If no plugs or barriers exist, take reasonable measures to drain or dry all compartments or spaces that may retain water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.
- C.** Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations listed in Director’s Order 2, a person shall comply with the mandatory conditions and protocols identified in Director’s Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.
- D.** Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E.** If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order a person to decontaminate or cause to be decontaminated such watercraft, vehicle, conveyance, or equipment using the mandatory protocols described in Director’s Order 3.
- F.** The following Director’s Orders are available at any Department office and online at azgfd.gov:
1. Director’s Order 1 – Listing of Aquatic Invasive Species for Arizona,
 2. Director’s Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present, and
 3. Director’s Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.
- G.** This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(2), 17-255, 17-255.01, 17-255.02, 17-255.03, and 17-255.04

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-901 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2). New Section R12-4-901 renumbered from R12-4-1101 by final expedited rulemaking at 24 A.A.R. 407, effective February 6, 2018 (Supp. 18-1)

TITLE 17. GAME AND FISH
CHAPTER 2. GAME AND FISH DEPARTMENT AND GAME AND FISH COMMISSION

Art. 3. Powers and Duties

17-231. General powers and duties of the commission

Art. 3.1. Aquatic Invasive Species

17-255. Definition of aquatic invasive species

17-255.01. Aquatic invasive species program; powers

17-255.02. Prohibitions

17-255.03. Violations; civil penalties; classification; cost recovery

17-255.04. Applicability; no private right of action

ART. 3. POWERS AND DUTIES

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic

competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

- C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
- D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

ART. 3.1. AQUATIC INVASIVE SPECIES

17-255. Definition of aquatic invasive species

In this article, unless the context otherwise requires, "aquatic invasive species":

- 1. Means any aquatic species that is not native to the ecosystem under consideration and whose introduction or presence in this state may cause economic or environmental harm or harm to human health.
- 2. Does not include:
 - (a) Any nonindigenous species lawfully or historically introduced into this state for sport fishing recreation.
 - (b) Any species introduced into this state by the department, by other governmental entities or by any person pursuant to this title.

17-255.01. Aquatic invasive species program; powers

- A. The director may establish and maintain an aquatic invasive species program.
- B. The director may issue orders:
 - 1. Establishing a list of aquatic invasive species for this state.
 - 2. Establishing a list of waters or locations where aquatic invasive species are present and take steps that are necessary to eradicate, abate or prevent the spread of aquatic invasive species within or from those bodies of water.
 - 3. Establishing mandatory conditions as provided in subsection C of this section on the movement of watercraft, vehicles, conveyances or other equipment from waters or locations where aquatic invasive species are present to other waters.
- C. If the presence of an aquatic invasive species is suspected or documented in this state, the director or an authorized employee or agent of the department may take one or more of the following actions to abate or eliminate the species:
 - 1. Authorize and establish lawful inspections of watercraft, vehicles, conveyances and other equipment to locate

the aquatic invasive species.

2. Order any person with an aquatic invasive species in or on the person's watercraft, vehicle, conveyance or other equipment to decontaminate the watercraft, vehicle, conveyance or equipment in a manner prescribed by rule. Notwithstanding paragraph 3 of this subsection, mandatory on-site decontamination shall not be required at a location where an on-site cleaning station charges a fee.
 3. Require any person with a watercraft, vehicle, conveyance or other equipment in waters or locations where an aquatic invasive species is present to decontaminate the property before moving it to any other waters in this state or any other location in this state where aquatic invasive species could thrive.
- D. An order issued under subsection B or C of this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

17-255.02. Prohibitions

Except as authorized by the commission, a person shall not:

1. Possess, import, ship or transport into or within this state, or cause to be imported, shipped or transported into or within this state, an aquatic invasive species.
2. Notwithstanding section 17-255.04, subsection A, paragraph 4, release, place or plant, or cause to be released, placed or planted, an aquatic invasive species into waters in this state or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.
3. Notwithstanding section 17-255.04, subsection A, paragraph 4, place in any waters of this state any equipment, watercraft, vessel, vehicle or conveyance that has been in any water or location where aquatic invasive species are present within the preceding thirty days without first decontaminating the equipment, watercraft, vessel, vehicle or conveyance.
4. Sell, purchase, barter or exchange in this state an aquatic invasive species.

17-255.03. Violations; civil penalties; classification; cost recovery

- A. Except as otherwise provided by this section, a person who violates this article is subject to a civil penalty of not more than five hundred dollars.
- B. A person who knowingly violates section 17-255.02, paragraph 2 or 4 is guilty of a class 2 misdemeanor. In addition, the commission, or any officer charged with enforcing this article if directed by the commission, may bring a civil action in the name of this state to recover damages and costs against a person who violates section 17-255.02, paragraph 2 or 4. Damages and costs recovered pursuant to this subsection shall be deposited in the game and fish fund.
- C. The court shall order a person found in violation of section 17-255.01, subsection C, paragraph 2 to pay to this state all costs not exceeding fifty dollars incurred by this state to decontaminate any watercraft, vehicle, conveyance or other equipment on which aquatic invasive species were present. Monies paid pursuant to this subsection shall be deposited in the game and fish fund.

- D. This section applies regardless of whether the director establishes an aquatic invasive species program pursuant to section 17-255.01.

17-255.04. Applicability; no private right of action

- A. This article does not apply to the owner or operator of:
 - 1. Any system of canals, laterals or pipes, any related or ancillary facilities, fixed equipment and structures related to the delivery of water and any discharges from the system.
 - 2. Any water treatment or distribution facility system, any related or ancillary facilities, fixed equipment and structures and any discharges from the system.
 - 3. Any drainage, wastewater collection, treatment or disposal facility system, any related or ancillary facilities, fixed equipment and structures and any discharges from the system.
 - 4. A public or private aquarium and education or research institution holding a permit pursuant to section 17-238 or 17-306.
 - 5. Any stock ponds or livestock water facilities or distribution facilities, including fixed equipment and structures related to the delivery of water and any discharges from the system.
- B. The director may consult with the entities listed in subsection A of this section to assist in the implementation of this article.
- C. This article does not create any express or implied private right of action and may be enforced only by this state.

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 11. AQUATIC INVASIVE SPECIES
R12-4-406, R12-4-518, R12-4-1101, AND R12-4-1102
Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rule making.

“Aquatic invasive species” means any non-native species whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Dreissena species (quagga and zebra mussels) pose a threat to public health and safety in Arizona because of their potential to contaminate state waterways. *Director’s Order 1 - Aquatic Invasive Species Initial Listing of Aquatic Invasive Species for Arizona*, published in the Arizona Administrative Register March 12, 2010, lists both the quagga and zebra mussels as aquatic invasive species.

The unrestricted spread of quagga and zebra mussels has far-reaching financial and ecological impacts that can affect virtually every Arizona resident. These species cost millions of dollars annually to control. Congressional researchers estimated that from 1993 to 1999, zebra mussels alone cost the power industry \$3.1 billion and industries, businesses, and communities more than \$5 billion. The State of California spends well over \$1.5 million annually to hyperchlorinate water and remove dead mussels from water delivery systems.

Quagga and zebra mussels reproduce rapidly, resulting in large populations in affected water bodies. Quagga populations represent a serious problem for water delivery systems and industrial facilities. These mussels accumulate on underwater surfaces and impair water delivery structures and systems. They clog water intake and delivery pipes and infest hydropower infrastructure, dams, and water control structures. They adhere to watercraft bottoms, engines, docks, and pilings and can ultimately destroy beaches and alter the functioning of native aquatic ecosystems.

A principal pathway for the transfer of quagga and zebra mussels between water bodies is the overland movement of watercraft. Adult mussels attach to watercraft and juvenile mussels are present in water contained in un-drained bilge areas, live wells, internal storage spaces, or conveyances. The establishment of mandatory conditions for overland movement of watercraft in this state is essential in preventing the spread of these mussels to unaffected water bodies, and the financial, economic, and ecological costs that result. Bio-fouling caused

by quagga and zebra mussels is both chronic and acute. Chronic fouling occurs when juvenile mussels attach themselves to external and internal structures, grow in place, and reduce or even cut off water flow. Acute fouling occurs when large build ups of adult mussel shells, alive or dead, detach from upstream locations and are carried by water flow into water delivery systems. The large quantities of mussel shells quickly plug small diameter pipes, fixed strainers, filters, and heat exchangers. Quagga mussel populations are currently established in a number of waterbodies, including Lake Mead, Lake Mohave, Lake Havasu, and Lake Pleasant. While zebra mussels have not yet been detected in Arizona, they pose a serious potential threat as they are currently present in California and Colorado. The establishment of decontamination procedures in rule, as specified in A.R.S. § 17-255.01(C)(2), is necessary to fully implement this new legislation and guide the public's expectations regarding actions that may be mandatory on their part.

Title 17, Chapter 2, Article 3.1 authorizes the Director to establish mandatory conditions and protocols for the movement of watercraft to and from waters and locations within the state, and conditions for the decontamination of watercraft, vehicles, conveyances, and equipment suspected of harboring aquatic invasive species. These conditions and protocols include: removing attached mussels and other aquatic invasive species from all watercraft surfaces, motors, impellers, and equipment by scraping the mussels from the surface or spraying the surface with high-pressure heated water; removing drain plugs; removing any clinging material such as plants, animals or mud; draining water from bilges, live-wells, engine and engine cooling systems; and allowing watercraft to dry completely before launching into another waterway.

Title 17, Chapter 2, Article 3.1 exempts owners and operators of any system of canals, laterals or pipes, any related ancillary facilities, fixed equipment and structures related to the delivery of water and any discharges from such system; any water treatment or distribution facility system, any related or ancillary facilities, fixed equipment and structures related to the delivery of water and any discharges from such system; any drainage, wastewater collection, treatment or disposal facility system, any related or ancillary facilities, fixed equipment and structures, and any discharges of the system; a public or private aquarium and education or research institution holding a permit pursuant to section 17-238 or 17-306; and any stock ponds or livestock water facilities or distribution facilities, including fixed equipment and structures related to the delivery of water and any discharges from the system.

The rulemaking will benefit all residents and businesses by proactively addressing the far-reaching financial and ecological impacts that these bio-fouling mussels pose to public health and safety and Arizona's waterways.

The proposed rulemaking will provide definitions for terms related to aquatic invasive species and establish prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols.

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

Arizona's mild winters allow year round boating and fishing. Boating and other water-related activities increase in the spring. In 2010, approximately 136,463 watercraft were registered in Arizona. During this same period, 164,688 (Class A and Super Conservation) Arizona fishing licenses were sold. While it is not possible to quantify the number of watercraft present on Arizona waterways at any given time, it is safe to say the opportunity for the unintentional transport of these species is very high.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

If nothing is done to prevent the spread of these bio-foulers, the far-reaching financial and ecological impacts can affect virtually every resident of the state.

According to the New York Invasive Species Clearinghouse, zebra mussels have caused \$1 billion to \$1.5 billion worth of economic harm since their introduction into North America.

Once invasive mussels are established in a waterbody, they reproduce rapidly. There is no proven method to eradicate them.

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

The Commission believes that the spread of quagga and zebra mussels can be greatly reduced by implementing a rule that provides mandatory decontamination procedures in accordance with the conditions and protocols set forth in the Director's Orders.

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

The rulemaking will benefit private consumers and public and private entities by addressing a current threat to the state's economy, ecology, and public health and safety.

The rulemaking will have little or no financial effect on most watercraft owners and operators, but there may be increased costs to decontaminate a watercraft moored long-term in an infested waterbody.

The Commission anticipates increased costs associated with implementing the proposed rules due to increased training of enforcement officers.

The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Name: Tom McMahon, Invasive Species Coordinator

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

Telephone: (623) 236-7271

Fax: (623) 236-7366

Email: tcmahon@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rule making.

See paragraph (A)(1) above.

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

Persons who benefit:

Private persons and consumers

Utility and water delivery companies

Businesses offering decontamination products or services

Persons who bear the costs:

Private persons and consumers moving watercraft, vehicles, conveyances, or equipment overland from affected waters

Businesses that rent, transport, or sell watercraft that has been located in affected waters

3. Cost benefit analysis:

The unrestricted spread of quagga and zebra mussels has far-reaching financial impacts that can affect virtually every resident of the state. These mussels cost millions of dollars annually to control and costs are passed on to consumers and other businesses in the form of increased water, sewer, and electrical power costs.

Costs for decontaminating watercraft are estimated to range from no 'out of pocket' costs to approximately \$2,000. A person operating watercraft for a day will simply remove the drain plug and allow the watercraft to dry, incurring no costs. A person operating watercraft for a number of days may decontaminate the watercraft using vinegar at a cost of less than \$10,

along with a specified dry period. A person moving a 65 foot houseboat encrusted with quagga mussels, from an affected waterbody to any other location may spend \$1,500 to \$2,000 to service, clean, and decontaminate the watercraft. In comparison, an owner may spend \$5,000 or more in transport costs alone in moving a houseboat from Lake Pleasant to Lake Powell; this is only the cost for overland movement of the houseboat and does not include extrication or crane costs.

Quagga mussels were first discovered in Lake Mead in 2007. Laws 2009, First Regular Session, Chapter 77, enacted the Department's Aquatic Invasive Species Program. Given the short amount of time quagga mussels have been present in Arizona, the newness of the Department's program, and the current inability to track costs incurred by various water delivery and power companies, it is not yet possible to quantify the monetary costs and benefits to Arizona residents and businesses. However, considering costs incurred by adjacent states, the benefits resulting from the proposed rulemaking far outweigh the costs resulting from the rulemaking.

- (a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.**

The Department and local law enforcement will incur costs related to enforcement of the inspection and decontamination order requirement. A law enforcement officer may require a person to submit to an inspection if invasive mussels are present or suspected, and, if an invasive species is present, order the person to decontaminate the watercraft, vehicle, conveyance, or equipment.

The Commission anticipates that the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in implementing the aquatic invasive species program since the adoption of the law in 2009. The Commission does not believe the rulemaking will require any new full-time employees.

- (b) Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.**

Political subdivisions will benefit from a rule designed to prevent the spread of aquatic invasive species. Political subdivisions or units of a political subdivision include, but are not limited to, municipal water delivery systems, municipal water treatment facilities, Salt River Project, Central Arizona Project, power authorities, water districts, and irrigation districts.

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

The Department's inspection and decontamination requirements may affect businesses such as, but not limited to, marinas, liveries, transporters, businesses that lease aquatic equipment, and businesses that provide decontamination services. Costs may include decontamination fees as well as time or revenue lost while the watercraft is decontaminated. It is likely businesses will pass these costs on to the customer. However, the identified businesses ultimately benefit from the Commission's rulemaking.

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

The Commission anticipates the rulemaking will not adversely impact private and public employment.

5. Statement of the probable impact of the proposed rule making on small businesses:

(a) Identification of the small businesses subject to the proposed rule making.

Small businesses include, but are not limited to, marinas, liveries, transporters, businesses that lease aquatic equipment, and businesses that provide decontamination services.

(b) Administrative and other costs required for compliance with the proposed rule making.

The Commission anticipates the rulemaking will not impact administrative costs. Other costs may include decontamination fees and time or revenue lost while the watercraft is decontaminated. It is likely that businesses will pass these costs on to the consumer.

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

The Commission believes the methods provided are the least burdensome for small businesses.

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

The Commission anticipates the rulemaking will have a minimal impact on private persons and consumers. Ninety-nine percent of watercraft users are day users who use their watercraft during the weekend. These persons will be required to simply “clean, drain, and dry” their watercraft, thus incurring no additional costs. A person who owns or operates a 65 foot houseboat, moored long-term in Lake Mead, Lake Mohave, Lake Havasu, Lake Pleasant, Mittry Lake, Martinez Lake, Imperial Reservoir, Topock Marsh, or the Lower Colorado River (from Pierce Ferry Rapid through the southerly international boundary with Mexico), and being moved to any other location may be required to spend \$1,500 to \$2,000 to decontaminate the houseboat.

6. Statement of the probable effect on state revenues.

The Commission anticipates the rulemaking will have no effect on state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making including the monetizing of the costs and benefits for each option and providing rationale for not using the nonselected alternatives.

The Commission has determined that there are no less intrusive or less costly methods that would fulfill the requirements of A.R.S. § 17-255.01.

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

The Commission believes it has sufficient data to make an accurate assessment of the probable impacts of the rulemaking.

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

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

Article 11	Re-number
Article 9	Re-number
R12-4-1101	Re-number
R12-4-901	Re-number
R12-4-1102	Re-number
R12-4-902	Re-number
R12-4-902	Amend

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

Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-255.01, 17-255.02, and 17-255.03

- 3. The effective date of the rules:**
 - a. If the agency selected a date earlier than the 60 days 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 rule is effective immediately upon filing with the Secretary of State's office as authorized under A.R.S. § 41-1027(H), which allows an immediate effective date upon filing the Notice of Expedited Rulemaking with the Secretary of State's Office.

 - b. If the agency selected a date later than the 60 days 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 earlier effective date as provided in A.R.S. § 41-1032(A)(B):**

Not applicable

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

Notice of Rulemaking Docket Opening: 23 A.A.R. (*to be filled in by the Register Editor*), October 13, 2017
Notice of Proposed Expedited Rulemaking: 23 A.A.R. (*to be filled in by the Register Editor*), October 13, 2017

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

Name: Celeste Cook, Rules and Policy Manager
Address: Arizona Game and Fish Department
 5000 W. Carefree Highway

Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7110

E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

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

The Arizona Game and Fish Commission proposes to amend its rules following the 2017 five-year rule review of Article 11, Aquatic Invasive Species, to enact recommendations developed during the five-year review. The recommended amendments are designed to make the rule more concise and reduce regulatory ambiguity.

Under A.R.S. § 41-1027, an agency may use the expedited rulemaking process to if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following: (A)(3) clarifies language of a rule without changing its effect; or (A)(7) implements, without material change, a course of action that is proposed in a five-year review report approved by the Governor's Regulatory Review Council (G.R.R.C.) pursuant to A.R.S. § 41-1056 within one hundred eighty days of the date that the agency files the Notice of Proposed Expedited Rulemaking with the Secretary of State. The Commission approved the Article 6 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and G.R.R.C. approved the Article 6 5YRR at the March 7, 2017 Council Meeting.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated May 1, 2017.

R12-4-1101. Definitions

The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 11. The Commission proposes to renumber the rule to R12-4-901.

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

The objective of the rule is to establish the requirements necessary to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. Aquatic invasive species are a threat to Arizona's water and electrical infrastructure and the public's angling and boating recreation. It is critical for anyone who owns or uses watercraft, vehicle, conveyance or equipment on Arizona's waterbodies, to understand the essential nature of the aquatic invasive species containment effort by the Department, other state and federal agencies and political subdivisions. The spread of aquatic invasive species will result in far-reaching impacts that can touch virtually every resident of Arizona. For example, quagga mussels have a negative ecological and environmental impact to Arizona waterways and water delivery systems. These mussels accumulate on underwater surfaces and impair water delivery structures and systems. They clog water intake

and delivery pipes and infest hydropower infrastructure, dams, and water control structures. They adhere to watercraft bottoms, engines, docks, and pilings and can ultimately destroy beaches and alter the functioning of native aquatic ecosystems.

The principle pathway for quagga mussel transfer between watersheds is the overland movement of boats and equipment with attached adult mussels and the movement of water itself containing juvenile mussels in undrained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. The initial movement of these mussels to the Colorado River was in all likelihood as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland. Aquatic invasive species are currently established in a number of Arizona waterbodies: Lake Pleasant, Lake Havasu, Lake Mead, Lake Mohave, Martinez Lake, Mittry Lake, Topock Marsh, and Lake Powell; water delivery systems: parts of the Central Arizona Project aqueduct and Salt River Project Canal System; and other states and countries: Alabama, Arkansas, California, Colorado, Connecticut, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Vermont, Wisconsin, West Virginia; and the Provinces of Ontario and Quebec.

Since 2011, in addition to media campaigns (newsletters, billboards, radio and television advertisements), the Department's Aquatic Invasive Species Program has performed numerous outreach campaigns and conducted surveys on the boat ramps at various quagga infested waterbodies (e.g., Havasu, Pleasant, and Powell). State-wide surveys indicate a gap between knowledge of required actions and the physical action of pulling a drainage plug when exiting infested waterbodies in Arizona. In 2015, 85% of boaters surveyed verbally by Department personnel said they pull their boat's plug upon exit; however only 67% were physically observed pulling the boat's drain plug upon exiting.

The Commission proposes to renumber the rule from R12-4-1102 to R12-4-902. The Commission has determined there are issues with compliance due to the current boating culture, (similar to requiring the use of seat belts in automobiles) which will require a paradigm shift in common boating practices. Some persons do not believe they need to remove plugs and devices that prevent water from draining; other persons remove the plug or barrier, but then replace it before leaving the waterbody, which makes it difficult for law enforcement to determine whether a person is in compliance with the rule when they are driving away from a waterbody where aquatic invasive species are established or suspected with the plug and/or device in place. To reduce regulatory ambiguity and clearly communicate compliance requirements, the Department proposes to amend the rule to specify a person is required to remove all plugs and devices, except those that are sealed and exist for maintenance purposes only, and any other barriers that prevent water drainage while a watercraft, vehicle, conveyance, or equipment is in transport after leaving any affected waterbody.

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

8. A showing of good cause why the rulemaking 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. A summary of the economic, small business, and consumer impact:

Under A.R.S. § 41-1027, the rulemaking is exempt from this requirement; however, the Commission offers the following: The Commission anticipates the proposed amendments will have an insignificant impact on persons regulated by the rule. However, establishing conditions for the overland movement of watercraft, vehicles, conveyances, and equipment is crucial in helping to prevent the accidental spread of aquatic invasive species and the far-reaching financial and ecological impacts that can affect virtually every Arizona resident and water storage, treatment, and delivery provider. The rulemaking will benefit private consumers and public and private entities by addressing a current threat to the state's economy, ecology, and public health and safety. The rulemaking will have little or no financial effect on most watercraft owners and operators. The Commission anticipates increased costs associated with implementing the amended rules due to increased training of enforcement officers. The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Minor grammatical and formatting corrections that were made 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:

In addition to the publication of the Notice of Proposed Expedited Rulemaking in the *Arizona Administrative Register*, the Department posted the Notice of Proposed Expedited Rulemaking to the Department's website, from September 15 to October 15, 2017, for the purpose of public comment. In addition, on October 15, 2017, the Department emailed information regarding the proposed rulemaking to persons interested in receiving rulemaking notices. The Department also issued a press release regarding the proposed changes included in the Notice of Proposed Expedited Rulemaking and the Department's contact information for persons interested in submitting a comment. The Department did not receive any public or stakeholder comments in response to the proposed rulemaking.

12. All agency's 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 reason why a general permit is not used:

The rule does not require 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:

Federal law is not directly applicable to the subject of the rule. The rule is based on state 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:

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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 previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(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 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE ~~419~~. AQUATIC INVASIVE SPECIES

Section

~~R12-4-1101.~~ R12-4-901. Definitions

~~R12-4-1102.~~ R12-4-902. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

ARTICLE 112. AQUATIC INVASIVE SPECIES

~~R12-4-1101.~~ R12-4-901. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

"Aquatic invasive species" means those species listed in Director's Order 1.

"Certified agent" means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

"Conveyance" means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

"Equipment" means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

"Operator" means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

"Owner" means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

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

"Release" means to place, plant, or cause to be placed or planted in waters.

"Transporter" means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

"Waters" means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

~~R12-4-1102.~~ R12-4-902. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

A. A person shall not, unless authorized under Article 4:

1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

B. Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director's Order 2 and ~~before leaving that location~~ prior to transport, a person shall:

1. Remove all clinging materials such as plants, animals, and mud.
2. Remove ~~any plug or~~ all plugs and ~~other barrier valves or devices that prevents~~ prevent water drainage ~~or, where none exists, take reasonable measures to drain or dry~~ from all compartments or spaces that hold may

retain water. Reasonable measures include, but are not limited to, emptying, such as ballast tanks, ballast bags, bilges, application of absorbents, or ventilation and ensure plugs or devices remain removed or open during transport.

3. If no plugs or barriers exist, take reasonable measures to drain or dry all compartments or spaces that may retain water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.

- C. Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations ~~where aquatic invasive species are suspected or known to be present, as listed in Director's Order 2, a person shall comply with the mandatory conditions and protocols identified in Director's Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.~~
- D. Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E. If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order a person to decontaminate or cause to be decontaminated such watercraft, vehicle, conveyance, or equipment using the mandatory protocols described in Director's ~~order~~ Order 3.
- F. The following Director's Orders are available at any Department office and online at azgfd.gov:
 - 1. Director's Order 1 – Listing of Aquatic Invasive Species for Arizona,
 - 2. Director's Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present, and
 - 3. Director's Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.
- G. This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 33, Group Homes for Individuals with a Developmental Disability



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2022

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

FROM: Council Staff

DATE: March 10, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 33, Group Homes for Individuals with a Developmental Disability

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 33, regarding Group Homes for Individuals with a Developmental Disability. The purpose of these rules is to establish minimum health and safety standards for the licensing of group homes.

In the previous 5YRR for these rules, which the Council approved in February 2017, the Department did not propose to take any action on these rules.

Proposed Action

In this 5YRR, the Department identifies certain minor, technical issues with the rules that affect the rules' clarity, conciseness, understandability, and effectiveness. The Department proposes to address these issues and submit a Notice of Final Expedited Rulemaking to the Council by February 2023.

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

Yes. The Department cites both general and specific statutory authority for the rules under review.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

According to the Department, the rules in 9 A.A.C. 33 were last revised effective February 3, 2013, and affected the Department, the Division of Developmental Disabilities (Division), individuals and entities that operate group homes, and individuals with a developmental disability who are residents of group homes and their families.

The Department licenses group home facilities and the Division licenses group home services. The Department's requirements for group home facilities are in 9 A.A.C. 33. During calendar year 2021, the Department licensed approximately 1,310 group homes, all of which held a two-year license. During 2021, the Department received 695 applications, of which 141 were for initial licenses and 554 of which were renewal licenses. During 2021, the Department did not revoke any group home licenses.

In the Economic, Small business, and Consumer Impact Statement (EIS) submitted with the 2012 rulemaking, the Department stated that "[n]one of the amendments are expected to impose new costs or increase existing costs for licensees in compliance with the rules or for other stakeholders. In general, the amendments were expected to cause monetary or other benefits to stakeholders." The Department believes the economic impact is as estimated in the 2012 EIS.

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

The Department believes that the protection of the health and safety of residents of group homes outweigh the probable costs of the rules. Despite the minor issues identified in this report, which may impose a slightly increased regulatory burden, the rules in total impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates that the rules are clear, concise, and understandable, but identifies three rules that could be improved by making minor, technical amendments.

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

Yes. The Department indicates that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department indicates that the rules are effective in achieving their objectives, but identifies two rules whose effectiveness could be improved for the reasons specified in Item 3 of the 5YRR.

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

Yes. The Department indicates that the rules are enforced as written.

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

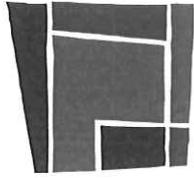
The Department indicates that there are no specific federal laws that correspond to these rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that the rules are exempt from the general permit requirement in A.R.S. § 41-1037 under A.R.S. § 41-1037(A)(2) because the license issued under the rules is specific to the facility, service provider, and level of service pursuant to A.R.S. § 36-591 *et seq.* Upon review of the applicable statutes, Council staff agrees.

11. **Conclusion**

Council staff finds that the Department submitted a 5YRR that meets the requirements of A.R.S. § 41-1056. Council staff notes that the Department proposes to address the issues identified in this 5YRR through an expedited rulemaking which the Department plans to submit to the Council by February 2023. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 1, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 33, Five-Year-Review Report

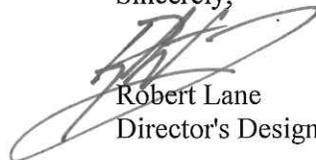
Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 33, Group Homes for Individuals with a Developmental Disability, which is due on or before February 28, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov or 602-364-1230.

Sincerely,



Robert Lane
Director's Designee

RL:rms

Enclosures

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

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247 P | 602-542-1025 F | 602-542-1062 W | azhealth.gov

Health and Wellness for all Arizonans



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 33. Department of Health Services

Group Homes for Individuals with a Developmental Disability

February 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-104(3) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-132(A)(21), 36-591(A), and 36-595(C) and (D)

2. The objective of each rule:

Rule	Objective
R9-33-101	To define terms used in the Chapter to ensure consistent interpretation of requirements.
R9-33-102	To require an entity operating a group home to be licensed by the Department; and specify that the license is restricted to the place, person, and time listed on the license.
R9-33-103	To establish who may act for an applicant or licensee.
R9-33-104	To specify the content of a license application and how the application is processed. To require an applicant or licensee to allow the Department access to all areas of the premises, a resident, record, or vehicle used to transport a resident.
R9-33-105	To specify the timing for submission and content of an application to renew a license, as well as provide information about how the application is processed.
R9-33-106	To specify the conditions under which a licensee is required to notify the Department and the action that the Department would take under each circumstance.
R9-33-107	To specify the process by which the Department investigates complaints about group homes and the action to be taken by a licensee as a result of an investigation.
R9-33-108	To establish the process for reviewing applications.
R9-33-109	To establish the conditions under which the Department may deny, revoke, or suspend a license to operate a group home. To notify an applicant of their right to appeal a decision. To require the Department to notify the Division of the suspension or revocation of a license.
Table 1.1	To establish time-frames for processing applications.
R9-33-201	To establish requirements for developing and implementing of a group home's emergency plan, maintaining proper address signage at the group home, ensuring safety measures related to ingress and egress from the group home, the availability and content of a first aid kit, and conducting evacuation drills.
R9-33-202	To establish which fire safety requirements apply to a group home at each of the two fire risk prevention levels.

	To require licensees to obtain fire inspections and have and maintain fire extinguishers, smoke detectors, and other appropriate fire safety fixtures, procedures, and equipment.
R9-33-203	To establish physical plant requirements for a group home, including those related to modifications to ensure that the premises are accessible to and usable by a resident and to maintaining safe air and water temperatures, adequate ventilation, and safe and working electrical and plumbing systems.
R9-33-204	To establish environmental requirements for maintaining a group home in a hazard-free manner, including requirements related to sanitation, toxic chemicals, and space heaters.
R9-33-205	To establish requirements for a vehicle used to transport a resident of a group home to ensure health and safety.
R9-33-206	To establish requirements for a private residential swimming pool or spa on the premises of a group home to ensure health and safety.

3. **Are the rules effective in achieving their objectives?** Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-33-105 and R9-33-108	The rule is effective, but it could be just as effective, less burdensome to the regulated facilities, and potentially improve health and safety of residents if R9-33-105(B) and R9-33-108(C)(1) were revised to unlink inspections and renewals. This would allow an inspection to be performed at any time during the licensing period, encouraging compliance during the entire licensing period rather than changes to improve compliance being made just before the time of renewal when an inspection is expected to take place. It would also reduce the chance of a delay in the issuance of a renewal license until an inspection occurs. In addition, serious compliance issues could be addressed in a more timely fashion through the enforcement process, rather than during the renewal process.

4. **Are the rules consistent with other rules and statutes?** Yes X No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes X No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes X No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-33-101	The rule is clear, concise, and understandable, but could be improved by removing redundancies in the definitions of “Administrative completeness review time-frame,” “Overall time-frame,” and “Substantive review time-frame.” These definitions all reference A.R.S. § 41-1072, but A.R.S. § 41-1072 is referenced again in R9-33-108.
R9-33-202	The rule is clear, concise, and understandable, but could be improved by clarifying that a resident must be able to use the “openable window” as an emergency exit.
R9-33-206	The rule is clear, concise, and understandable, but could be further improved by clarifying an apparent inconsistency in subsection (A)(1) between the requirement of a “rigid” fence and the allowance of a “wire mesh fence.” The rule would also be more understandable and less burdensome if the types of “objects” in subsection (A)(1)(e) were clarified.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

A.R.S. §§ 36-132(A)(21) and 36-591 require the Department to license and regulate the health and safety of group homes for the developmentally disabled (group homes). Programmatic oversight of group homes is vested in the Arizona Department of Economic Security, Division of Developmental Disabilities (Division) in A.R.S. §§ 36-591 through 36-595.03. Put simply, the Department licenses group home facilities, while the Division licenses group home services. The Department has established requirements for group home facilities in 9 A.A.C. 33. During calendar year 2021, the Department licensed approximately 1,310 group homes, all of which held a two-year license. During 2021, the Department received 695 applications, of which 141 were for initial licenses and 554 of which were renewal licenses. During 2021, the Department did not revoke any group home licenses.

The rules in 9 A.A.C. 33 were last revised effective February 3, 2013, and affected the Department, the Division, individuals and entities that operate group homes, and individuals with a developmental disability who are residents of group homes and their families. The rulemaking included changes to streamline, reorganize, and clarify requirements in all Sections; included more scenarios in which a licensee can make changes to its license without requiring issuance of a new license; provided instructions on how licensees could simulate the evacuation of bedridden residents instead of moving them, which would often be medically inadvisable; modernized first aid kit requirements; amended requirements related to alarm systems and fire extinguishers; and allowed licensees

that may only temporarily be without a resident placement from the Division to avoid revocation. The Department anticipated that these changes would allow stakeholders to achieve cost savings in applicable cases and to address the issues identified in the 2012 five-year-review report. In the economic, small business, and consumer impact statement (EIS) submitted in 2012 with the rulemaking, the Department stated that “[n]one of the amendments are expected to impose new costs or increase existing costs for licensees in compliance with the rules or for other stakeholders. In general, the amendments were expected to cause monetary or other benefits to stakeholders.” The Department believes the economic impact is as estimated in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

The previous five-year-review report stated that the rules were sufficient as written and proposed that no action be taken. The Department has adhered to this plan of action.

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

The rules establish minimum health and safety standards for the licensing of group homes. Any failure of a licensee to meet the minimum health and safety standards prescribed by rule poses a threat to the welfare of a resident, and residents of group homes are members of a vulnerable population of individuals with developmental disabilities. The Department believes that the protection of the health and safety of residents of group homes outweigh the probable costs of the rules. Despite the minor issues identified in this report, which may impose a slightly increased regulatory burden, the rules in total impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

There are no specific federal laws related to the rules.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules establish group home facility licensing requirements that comply with A.R.S. § 41-1037(A)(2) in that the license is specific to the facility, the service provider, and the level of service according to A.R.S. § 36-591, et seq.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Although the items described in paragraph 6 are minor, not substantive, and do not inhibit those regulated by the rules from understanding and complying with the rules, a change as described in paragraph 4 is one that could improve the effectiveness of the rules and possibly the health and safety of residents. Therefore, the Department plans to make changes to the rules to address these items and to submit a Notice of Final Expedited Rulemaking to the Council by February 2023.

TITLE 9. HEALTH SERVICES
CHAPTER 33. DEPARTMENT OF HEALTH SERVICES
GROUP HOMES FOR INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY
ARTICLE 1. LICENSURE REQUIREMENTS

Section

- R9-33-101. Definitions
- R9-33-102. Requirement for Licensure
- R9-33-103. Individuals to Act for Applicant or Licensee
- R9-33-104. Application and Inspection
- R9-33-105. License Renewal
- R9-33-106. Changes Affecting a License
- R9-33-107. Investigation of Complaints
- R9-33-108. Time-frames
- R9-33-109. Denial, Revocation, or Suspension of a License

Table 1.1 Time-frames (in days)

ARTICLE 2. GROUP HOME REQUIREMENTS

Section

- R9-33-201. Emergency Procedures and Evacuation Drills
- R9-33-202. Fire Safety Requirements
- R9-33-203. Physical Plant Requirements
- R9-33-204. Environmental Requirements
- R9-33-205. Vehicle Safety Requirements
- R9-33-206. Swimming Pool Requirements

ARTICLE 1. LICENSURE REQUIREMENTS

R9-33-101. Definitions

In addition to the definitions in A.R.S. § 36-551, the following definitions apply in this Chapter unless otherwise specified:

1. “Accreditation” means recognition as having met the operating standards and criteria of a nationally recognized accreditation organization.
2. “Administrative completeness review time-frame” means the same as in A.R.S. § 41-1072.
3. “Applicant” means an individual or business organization requesting a license under R9-33-104 to open a group home.
4. “Application packet” means the forms, documents, and additional information the Department requires to be submitted by an applicant.
5. “Business organization” means the same as “entity” in A.R.S. § 10-140.
6. “Controlling person” means a person who, with respect to a business organization:
 - a. Through ownership, has the power to vote at least 10% of the outstanding voting securities of the business organization;
 - b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
 - c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
 - d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
7. “Day” means a calendar day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or state holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday.
8. “Department” means the Arizona Department of Health Services.
9. “Documentation” means information in written, photographic, electronic, or other permanent form.
10. “Facility” means the building or buildings used for operating a group home.
11. “Fire risk prevention level” means a designation applied to a group home by the Division based on a formula aggregating safety factors existing at the group home.
12. “Hazard” means an object, equipment, situation, or condition that may result in physical injury or illness to an individual.
13. “Licensee” means the individual or business organization to which the Department has issued a license to operate a group home.

14. "Modification" means the substantial improvement, enlargement, reduction, alteration, or other substantial change in the facility or another structure on the premises at a group home.
15. "Overall time-frame" means the same as in A.R.S. § 41-1072.
16. "Plumbing system" means fixtures, pipes, and related parts, including a septic apparatus, assembled to carry clean water into a structure and to carry sewage out of a structure.
17. "Premises" means:
 - a. A facility; and
 - b. The grounds surrounding the facility that are owned, leased, or controlled by the licensee, including other structures.
18. "Private residential swimming pool" means the same as in A.A.C. R18-5-201.
19. "Resident" means an individual who is accepted by a licensee under the terms of a contract with the Division to live at the licensee's group home.
20. "Safety-approved" means tested and designated as meeting applicable safety standards by one or more of the following organizations:
 - a. Underwriters Laboratories,
 - b. Canadian Standards Association, or
 - c. Factory Mutual Insurance Company Global.
21. "Service provider contract" means the entirety of an applicant's or licensee's qualified vendor agreement with the Division.
22. "Spa" means the same as in A.A.C. R18-5-201.
23. "Staff" means the employees or volunteers who provide habilitation to residents at a group home.
24. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.

R9-33-102. Requirement for Licensure

- A. An applicant shall obtain a license to operate a group home from the Department before providing supervision or habilitation to an individual with a developmental disability in a group home.
- B. A license to operate a group home is valid for the following, as indicated on the license:
 1. Address of the group home;
 2. Name of the licensee;
 3. Name of the group home, if applicable;
 4. Fire risk prevention level; and
 5. Licensing period for the group home.

R9-33-103. Individuals to Act for Applicant or Licensee

When an applicant or licensee is required by this Chapter to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual; and
2. If the applicant or licensee is a business organization, the individual who the business organization has designated to act on the business organization's behalf for purposes of this Chapter and who:
 - a. Is a controlling person of the business organization,
 - b. Is a U.S. citizen or legal resident, and
 - c. Has an Arizona address.

R9-33-104. Application and Inspection

A. For a license to operate a group home, an applicant shall submit to the Department a completed application packet that contains:

1. An application form provided by the Department that includes:
 - a. The applicant's name;
 - b. The proposed group home's name, if any;
 - c. The address and telephone number of the proposed group home;
 - d. The applicant's address and telephone number, if different from the address or telephone number of the proposed group home;
 - e. The applicant's e-mail address;
 - f. The name and contact information of an individual acting on behalf of the applicant according to R9-33-103, if applicable;
 - g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-33-108(C)(3);
 - h. Whether the applicant is a current service provider or intends to become a service provider;
 - i. The fire risk prevention level at which the applicant anticipates operating the group home; and
 - j. The applicant's signature and the date signed;
2. A copy of the applicant's:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status;
3. A copy of the applicant's:
 - a. Current service provider contract with the Division indicating that services are to be provided

at the address of the proposed group home; or

- b. Documentation from the Division demonstrating that the applicant has a service provider contract pending for providing services at the address of the proposed group home; and
 4. A copy of the applicant's accreditation report issued by a nationally recognized accreditation organization, if applicable.
- B.** An applicant or licensee shall allow the Department immediate access to all areas of the premises, a resident, record, or vehicle used to transport a resident, according to A.R.S. § 41-1009.
- C.** Upon receipt of the application packet in subsection (A), the Department shall issue or deny a license to an applicant as provided in R9-33-108.

R9-33-105. License Renewal

- A.** At least 60 days before the expiration date indicated on a license to operate a group home, for renewal of the license to operate a group home, a licensee shall submit to the Department an application packet that contains the information and documents in R9-33-104(A)(1), R9-33-104(A)(3)(a), and R9-33-104(A)(4).
- B.** The Department shall renew a license to operate a group home:
1. If, after conducting an onsite inspection, the Department determines that the licensee is in compliance with the applicable requirements in this Chapter; and
 2. According to the time-frames in R9-33-108.

R9-33-106. Changes Affecting a License

- A.** A licensee shall notify the Department in writing at least 30 days before the effective date of:
1. Termination of operation of a group home;
 2. Termination of a service provider contract with the Division;
 3. A change in the ownership of the group home;
 4. A change in the name of the group home;
 5. If the licensee is an individual, a legal change of the licensee's name;
 6. Construction or modification of the facility or another structure on the premises other than construction or modification undertaken in accordance with R9-33-203(A); or
 7. If approved by the Division, a change in the group home's fire risk prevention level.
- B.** If the Department receives the notification in subsection (A)(1), the Department shall void the licensee's license to operate a group home as of the termination date specified by the licensee.
- C.** If the Department receives the notification in subsection (A)(2), the Department shall take the applicable action in R9-33-109.
- D.** If the Department receives the notification in subsection (A)(3), the Department shall void the licensee's

license to operate a group home upon issuance of a new license to operate a group home to the entity assuming ownership of the group home.

- E. If the Department receives the notification in subsection (A)(4) or (5), the Department shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license.
- F. If the Department receives the notification in subsection (A)(6) or (7), the Department shall conduct an inspection of the premises as indicated in R9-33-104(B) and, if the group home is in compliance with A.R.S. Title 36, Chapter 5.1 and this Chapter, if applicable, issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license.
- G. An individual or business organization planning to assume operation of an existing group home shall obtain a new license as required in R9-33-102(A) before beginning operation of the group home.

R9-33-107. Investigation of Complaints

- A. Upon receipt of a complaint or information indicating that a group home may not be in compliance with A.R.S. Title 36, Chapter 5.1 or this Chapter, the Department shall:
 - 1. Investigate the complaint or information about noncompliance within 30 days after receipt of the complaint or information about noncompliance;
 - 2. Develop a written report documenting the investigation;
 - 3. Provide the licensee with the written report in subsection (A)(2); and
 - 4. If the complaint or information about noncompliance was substantiated, notify the Division of the outcome of the investigation.
- B. If the Department substantiates a complaint or information about noncompliance at a group home, the licensee of the group home shall:
 - 1. Establish a plan of correction, if applicable, for correction of a deficiency;
 - 2. Agree to carry out the plan of correction by signing the written report in subsection (A)(2); and
 - 3. Ensure that a deficiency listed on the plan of correction is corrected within 30 days after the date of the plan of correction or within a time period the Department and the licensee agree upon in writing.

R9-33-108. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072 for a license granted by the Department under this Chapter is set forth in Table 1.1. The applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for a license granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application packet.
1. The Department shall send a notice of administrative completeness or deficiencies to the applicant or licensee within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
 - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant or licensee.
 - c. If an applicant or licensee fails to submit to the Department all of the information or items listed in the notice of deficiencies within 120 days after the date that the Department sent the notice of deficiencies or within a time period the applicant or licensee and the Department agree upon in writing, the Department shall consider the application withdrawn.
 2. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1.1 and begins on the date of the notice of administrative completeness.
1. As part of the substantive review of an application for a license, the Department shall conduct an inspection that may require more than one visit to the group home.
 2. The Department shall send a license or a written notice of denial of a license within the substantive review time-frame.
 3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information.
 - a. If the Department determines that an applicant or licensee, a group home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 5.1 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
 - b. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a

statement of deficiencies, within 30 days after the date of the comprehensive written request for additional information or the supplemental request for information or within a time period the applicant or licensee and the Department agree upon in writing.

- c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.
 - d. If an applicant or licensee fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(3)(b), the Department shall deny the application.
4. The Department shall issue a license if the Department determines that the applicant or licensee and the group home, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 5.1 and this Chapter.
 5. If the Department denies a license, the Department shall send to the applicant or licensee a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

R9-33-109. Denial, Revocation, or Suspension of a License

- A. The Department may deny an application or suspend or revoke a license to operate a group home if:
 1. An applicant or licensee does not meet the application requirements contained in R9-33-104 or R9-33-105(A);
 2. A licensee is not a service provider for the duration of one licensure period;
 3. A licensee does not correct the deficiencies according to the plan of correction contained in R9-33-107 by the time stated in the plan of correction; or
 4. The nature or number of violations revealed by any type of inspection or investigation of a group home poses a direct risk to the life, health, or safety of a resident.
- B. An applicant or licensee may appeal the Department's determination in subsection (A) according to A.R.S. Title 41, Chapter 6, Article 10.
- C. The Department shall immediately notify the Division when an application is denied and when a license to operate a group home is suspended or revoked.

Table 1.1 Time-frames (in days)

Type of approval	Statutory authority	Overall time-frame	Administrative completeness review time-frame	Substantive review time-frame
Application for a license under R9-33-104	A.R.S. § 36-132(A)(21)	120	60	60
Renewal of a license under R9-33-105	A.R.S. § 36-132(A)(21)	60	30	30

ARTICLE 2. GROUP HOME REQUIREMENTS

R9-33-201. Emergency Procedures and Evacuation Drills

A. A licensee shall ensure that a written plan for emergencies:

1. Is developed and implemented;
2. Is available and accessible to staff and each resident at the facility;
3. Contains procedures for responding to fire, emergency, severe weather conditions, and other disasters, including:
 - a. Routes of evacuation, location of firefighting equipment, and evacuation devices identified on a floor plan of the facility;
 - b. Instructions on the use of fire alarm systems, firefighting equipment, and evacuation devices;
 - c. Procedures for evacuating each resident, including a resident who is not capable of self-preservation or who has a mobility, sensory, or other physical impairment; and
 - d. Procedures for notifying an emergency response team, law enforcement, and the licensee or the licensee’s designee; and
4. Includes procedures for when a resident is missing from the premises.

B. A licensee shall ensure that:

1. The facility’s street address is painted or posted against a contrasting background so that the group home’s street address is visible from the street; or
2. The local emergency response team, such as the local fire department, is notified of the location of the facility in writing at least once every 12 months. The licensee shall make the written notification available for review at the facility for at least two years from the date of the notification.

C. A licensee shall ensure that:

1. Except as described in subsection (D), an evacuation drill that includes all residents, except any residents otherwise specifically excluded from evacuation drills as indicated on documentation provided by the Division for the resident, is conducted at least once every six months on each

shift; and

2. Documentation of an evacuation drill is available for review at the facility for at least two years after the date of the evacuation drill that includes:
 - a. The date and time of the evacuation drill;
 - b. The length of time to evacuate or simulate the evacuation of all residents from the facility;
 - c. A summary of the evacuation drill, including a list of the residents and staff who were present at the time of the drill, how the drill was performed, how long the drill took to complete, and, if applicable, a list of residents for whom evacuation was simulated; and
 - d. Except as provided in subsection (D)(2), if the length of time to evacuate all residents from the facility exceeds three minutes, a plan of correction to bring the evacuation time to three minutes or less in case of an actual emergency requiring evacuation.

D. If a group home provides services to a resident whom the Division has identified, through the assessment process used to determine the group home's fire risk prevention level, as having a condition that could cause a resident to be harmed if the resident participated in an evacuation drill, a licensee shall ensure that:

1. An evacuation drill:
 - a. Does not include the resident, and
 - b. Simulates the evacuation of the resident according to the plan required in subsection (A)(3)(c), and
2. The documentation of an evacuation drill required in subsection (C)(2) also includes, if the length of time to evacuate or simulate the evacuation of all residents exceeds five minutes, a plan of correction to bring the evacuation time to five minutes or less in case of an actual emergency requiring evacuation.

E. A licensee shall ensure that:

1. A first aid kit is available in the facility that has the following items in a quantity sufficient to meet the needs of residents and staff:
 - a. Adhesive sterile bandages of assorted sizes,
 - b. Sterile gauze pads,
 - c. Sterile gauze rolls,
 - d. Adhesive or self-adhering tape,
 - e. Antiseptic solution or sealed antiseptic wipes,
 - f. Re-closable plastic bags of at least one-gallon size,
 - g. Single-use non-porous gloves,
 - h. Scissors,

- i. Tweezers, and
 - j. A cardiopulmonary resuscitation mouth guard or mouth shield;
- 2. All stairways, hallways, walkways, and other routes of evacuation are free of any obstacle that may prevent evacuation of a resident in an emergency;
- 3. If a window or door contains locks, bars, grills, or other devices that obstruct evacuation, each device contains a release mechanism that is operable from the inside of a facility and that does not require the use of a key, special knowledge, or special effort;
- 4. Each facility contains a working non-cellular telephone that is available and accessible to staff and each resident at all times; and
- 5. The following are posted at the location of a facility's telephone:
 - a. Instructions to dial 911 or the telephone number of another local emergency response team, and
 - b. The address and telephone number of the group home.

R9-33-202. Fire Safety Requirements

A. The Department shall issue to an applicant or licensee:

- 1. A fire risk prevention level 1 group home license if the group home meets the requirements in subsections (B) through (G); and
- 2. A fire risk prevention level 2 group home license if the group home meets the requirements in subsections (B) through (H).

B. A licensee shall ensure that the premises are in compliance with all applicable state and local fire safety regulations and that:

- 1. Before a license is issued or renewed, a fire inspection is conducted by the local fire department, the Department, or an entity authorized by the Department;
- 2. Any repair or correction stated in a fire inspection report is made or corrected according to the requirements and time in the fire inspection report; and
- 3. A current fire inspection report is available for review at the group home.

C. A licensee shall ensure that the facility has at least one working, portable, all-purpose fire extinguisher labeled as rated at least 2A-10-BC by Underwriters Laboratories, or two co-located working, portable, all-purpose fire extinguishers labeled as rated at least 1A-10-BC by Underwriters Laboratories, installed and maintained in the facility as prescribed by the manufacturer or the fire authority having jurisdiction.

D. A licensee shall ensure that a fire extinguisher:

- 1. Is either:
 - a. Disposable and has a charge indicator showing green or "ready" status; or

- b. Serviced at least once every 12 months by a fire extinguisher technician certified by the National Fire Protection Agency, the International Code Council, or Compliance Services and Assessments; and
 2. If serviced, is tagged specifying:
 - a. The date of purchase or the date of recharging, whichever is more recent; and
 - b. The name of the organization performing the service, if applicable.
- E.** A licensee shall ensure that smoke detectors are:
 1. Working and audible at a level of 75db from the location of each bed used by a resident in the facility;
 2. Capable of alerting all residents in the facility, including a resident with a mobility or sensory impairment;
 3. Installed according to the manufacturer's instructions;
 4. Located in at least the following areas:
 - a. Each bedroom;
 - b. Each room or hallway adjacent to a bedroom, except a bathroom or a laundry room; and
 - c. Each room or hallway adjacent to the kitchen, except a bathroom, a pantry, or a laundry room; and
 5. If the licensee has been cited more than once in the previous four years under subsections (E)(1) through (4), either:
 - a. Hard-wired to the electrical system of the group home with a battery backup; or
 - b. Connected to an early-warning fire detection system required in subsection (H)(2), if applicable.
- F.** A licensee shall ensure that each bedroom has at least one openable window or door to the outside for use as an emergency exit.
- G.** A licensee shall ensure that:
 1. A usable fireplace is covered by a protective screen or covering at all times; and
 2. Combustible or flammable materials are not stored within three feet of a furnace, heater, water heater, or usable fireplace.
- H.** A licensee of a fire risk prevention level 2 group home shall ensure that:
 1. The facility contains an emergency lighting system that:
 - a. Works without in-house electrical power,
 - b. Illuminates the path of evacuation, and
 - c. Is inspected at least once every 12 months by the manufacturer or an entity that installs and repairs emergency lighting systems;
 2. The facility has an early-warning fire detection system that:

- a. Is safety-approved;
 - b. Is hard-wired or connected wirelessly, with battery back-up;
 - c. Sounds every alarm in the facility when smoke is detected;
 - d. Is installed in each bedroom, each room or each hallway adjacent to a bedroom, and each room or each hallway adjacent to a kitchen; and
 - e. Is inspected at least once every 12 months by the manufacturer or by an entity that installs and repairs early-warning fire detection systems;
3. The facility has one of the following:
- a. Sufficient staff on duty to evacuate all residents present at the facility within three minutes or, if applicable under R9-33-201(D), within five minutes; or
 - b. An automatic sprinkler system installed according to the applicable standard incorporated by reference in A.A.C. R9-1-412 and installed according to NFPA 13, NFPA 13R, or NFPA 13D, as applicable, that:
 - i. Covers every room in the facility; and
 - ii. Is inspected at least once every 12 months by the manufacturer or by an entity that installs and repairs automatic sprinkler systems; and
4. Documentation is available at the facility for two years after the date of an inspection:
- a. For:
 - i. The emergency lighting system inspection required in subsection (H)(1)(c);
 - ii. The early-warning fire detection system inspection required in subsection (H)(2)(e); and
 - iii. If applicable, the automatic sprinkler system required in subsection (H)(3)(b)(ii); and
 - b. That includes:
 - i. The date of the inspection,
 - ii. The name of the entity performing the inspection,
 - iii. A tag on the system or a written report of the results of the inspection, and
 - iv. A description of any repairs made to the system as a result of the inspection.

R9-33-203. Physical Plant Requirements

A. A licensee shall ensure that:

- 1. A group home is in compliance with applicable federal and state disability laws;
- 2. If a group home has a resident with a mobility, sensory, or other physical impairment, documentation is available for review at the group home that:
 - a. Is provided by the Division; and

- b. Identifies modifications, if any, needed to the premises to ensure that the premises are accessible to and usable by the resident;
3. The premises have been modified as identified by the Division in subsection (A)(2)(b);
4. Ramps, stairs, or steps on the premises are secured firmly to the ground or a permanent structure and have slip-resistant surfaces; and
5. If handrails and grab bars are installed in a facility, handrails and grab bars are securely attached and stationary.

B. A licensee shall ensure that:

1. A method of heating and cooling maintains the facility between 65° F and 85° F in areas of the facility occupied by residents;
2. Ventilation is provided by an openable window, air conditioning, or other mechanical device;
3. Working, safe appliances for cooling and cooking food are provided in the facility that:
 - a. Are safety-approved;
 - b. If used to refrigerate food, maintain the food at a temperature of 40° F or below at all times; and
 - c. If used to freeze food, maintain the food at a temperature of 0° F or below at all times;
4. Hot water temperatures in the facility are maintained between 95° F and 120° F; and
5. Bathtubs and showers contain slip-resistant strips, rubber bath mats, or slip-resistant surfaces.

C. A licensee shall ensure that:

1. Electrical lighting is contained in each room in the facility;
2. Electrical devices and equipment on the premises are safety-approved, safe, and in working order;
3. Electrical outlets on the premises are safe, covered with a faceplate, and installed in accordance with the requirements of the local jurisdiction;
4. If the facility was built or modified on or after the effective date of this Chapter, any electrical outlet located within 3 feet of a water source includes a ground fault circuit interrupt (GFCI);
5. An appliance, light, or other device with a frayed or spliced electrical cord is not used on the premises; and
6. An electrical cord, including an extension cord, on the premises is not:
 - a. Used as a substitute for permanent wiring,
 - b. Run under a rug or carpeting,
 - c. Run over a nail, or
 - d. Run from one room to another.

D. A licensee shall ensure that:

1. A facility contains a safe, working plumbing system;

2. If a facility's plumbing system is connected to a non-municipal sewage disposal system, the plumbing system and connective piping are free of visible leakage; and
3. The premises do not contain unfenced or uncovered wells, ditches, or holes into which an individual may step or fall.

R9-33-204. Environmental Requirements

A. A licensee shall ensure that:

1. The premises are free of accumulations of garbage or refuse;
2. Garbage and refuse in the facility are:
 - a. Stored in cleanable containers or in sealable plastic bags; and
 - b. Removed from the facility at least once every seven days;
3. Cleaning compounds and toxic substances are maintained in labeled containers that:
 - a. Are stored to prevent a hazard;
 - b. Are appropriate to the contents of each container;
 - c. If appropriate based on a resident's disability, are locked; and
 - d. Are stored in a separate location from food or medicine;
4. Unused furniture, equipment, fabrics, or devices are removed from the facility or maintained in a covered area on the premises that is designated by the licensee for storage in a manner that does not create a hazard; and
5. There are no firearms or ammunition on the premises;

B. A licensee shall ensure that:

1. The facility is maintained free of insects and vermin;
2. The premises and its structures and furnishings are:
 - a. In a clean condition,
 - b. Free of odors, such as urine or rotting food; and
 - c. In sufficiently good repair that no object, equipment, or condition present constitutes a hazard; and
3. Standing water is not allowed to accumulate on the premises, except in an area or vessel the purpose of which is to hold standing water.

C. A licensee shall ensure that:

1. An unvented space heater or open-flame space heater is not used on the premises;
2. An electric portable heater or electric radiant heater is not used on the premises unless the electric portable heater or electric radiant heater:
 - a. Has:

- i. Either a non-porous casing or a grill with a mesh small enough to prevent cloth or a child's finger from entering the casing,
 - ii. A tilt switch that shuts off power to the electric portable heater if the electric portable heater tips over,
 - iii. An automatic shutoff control to prevent overheating, and
 - iv. A thermostat control; and
 - b. Is plugged directly into a wall outlet; and
- 3. A vented space heater used on the premises is:
 - a. Safety-approved;
 - b. Professionally installed in accordance with the requirements of the local jurisdiction; and
 - c. Mounted as a permanent fixture in a wall, floor, or ceiling.

R9-33-205. Vehicle Safety Requirements

A. A licensee shall ensure that a vehicle used to transport a resident:

- 1. Is maintained in safe and working order; and
- 2. Is equipped with:
 - a. A working heating and air conditioning system;
 - b. A first aid kit that meets the requirements in R9-33-201(E)(1);
 - c. Working seat belts for the driver and each passenger; and
 - d. Floor mounted seat belts and wheel chair lock-down devices for each wheel chair passenger transported, if the vehicle is used to transport a passenger in a wheelchair.

B. A licensee shall ensure that documentation of each maintenance or repair of a vehicle used to transport a resident is available for review at the facility for at least two years after the date of the maintenance or repair.

R9-33-206. Swimming Pool Requirements

A. Except as provided in subsection (B), a licensee shall ensure that a private residential swimming pool on the premises:

- 1. If filled with water, is surrounded by a fence or enclosure constructed of rigid material that:
 - a. Is at least 5 feet high;
 - b. Is free of an opening that exceeds 4 inches or, if a wire mesh fence, is free of an opening that exceeds 1 3/4 inches;
 - c. Is free of openings for handholds or footholds on the exterior of the fence or enclosure;

- d. Is at least 20 inches from the edge of the private residential swimming pool;
 - e. Is clear of objects out to a distance of 30 inches on either side of the fence or enclosure from the level of the ground to a height of 5 feet above the fence or enclosure;
 - f. Has at least one gate that:
 - i. Opens outward from the private residential swimming pool,
 - ii. Has a self-closing latch attached no less than 54 inches above ground level as measured from the exterior side of the fence or enclosure, and
 - iii. Is locked when the private residential swimming pool is not in use;
 - g. Is secured perpendicular to level ground; and
 - h. Is located at least 54 inches from the exterior wall of the facility to allow evacuation without entering the private residential swimming pool area;
2. Is not located in the path of an emergency exit;
 3. If filled with water, is equipped with the following:
 - a. An operational water circulation system that clarifies the swimming pool water,
 - b. An operational vacuum cleaning system that maintains the sides and bottom of the pool free of dirt and debris,
 - c. A shepherd's crook that is attached to its own pole, and
 - d. A ring buoy with an attached rope that is at least 10 feet long plus the distance from the edge to the middle of the private residential swimming pool; and
 4. If not filled with water, is covered completely by a covering that:
 - a. Is permitted by the local jurisdiction,
 - b. Is free of an opening that exceeds 1 inch,
 - c. Withstands weight of at least 495 pounds per square foot on all parts of the covering without any distortion or compression, and
 - d. Has at least one access hatch that is locked so that a resident cannot open it.

B. The requirements in subsection (A) do not apply to a group home if the Division provides to the Department written documentation indicating that the Division has determined that the private residential swimming pool is safe, based upon the functional level of the residents:

1. At the time of initial licensure,
2. At the time of license renewal, and
3. Upon the placement of a resident at the group home.

C. A licensee shall ensure that a spa:

1. Except as specified in subsection (C)(2), is covered and locked when not in use, with a mechanism that a resident cannot open; and

2. If a resident is under 6 years of age, is enclosed by a fence specified in subsection (A)(1).

Statutory Authority for Rules in 9 A.A.C. 33

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 used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, 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 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 this 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 this 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 monies.

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 use 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 not 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.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and

public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to

supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

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

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

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

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

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

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name

and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and

for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

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

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

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

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

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates

of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

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

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

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

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed

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

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

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-591. Group homes; licensing; notification requirements

(L21, Ch. 409, sec. 9)

A. Group homes, except for those described in subsection D of this section, shall be licensed for health and safety by the department of health services pursuant to section 36-132.

B. The division shall notify the department of health services of:

1. Service providers that enter into contracts with the division for group homes or intermediate care facilities for individuals with intellectual disabilities.

2. Any violation of health and safety standards observed during monitoring visits.

C. The department of health services shall immediately notify the division:

1. When the license of a group home or intermediate care facility for individuals with intellectual disabilities has been denied, suspended or revoked.

2. Of any other licensing action taken on a group home or intermediate care facility for individuals with intellectual disabilities by the department of health services.

3. Of substantiated complaints regarding health and safety.

D. The division shall ensure that state-operated residential settings that are owned or leased facilities operated by the division meet the same standards as group homes unless they are required to be licensed and certified as intermediate care facilities for individuals with intellectual disabilities pursuant to 42 Code of Federal Regulations part 483, subpart I. An intermediate care facility for individuals with intellectual disabilities that is operated by the division or a private entity is required to be licensed pursuant to chapter 4 of this title and certified pursuant to 42 Code of Federal Regulations part 483, subpart I.

E. The department shall take any action it deems necessary to carry out the duties imposed by this section, including denying the application for licensure and suspending or revoking of the home's license.

36-595. Programmatic and contractual monitoring: deemed status

A. The department of economic security shall perform programmatic and contractual monitoring of the services it provides or for which it contracts.

B. The department shall promulgate rules that provide for deemed status. The department shall grant deemed status to a service provider that presents evidence that it maintains a current accreditation from a nationally recognized agency that the department determines maintains accreditation standards that meet the standards established by the department. On determination by the department that there is reasonable cause to believe a service provider is not adhering to the programmatic or contractual requirements of the department, the department and any duly designated employee or agent of the department may enter on and into the premises at any reasonable time for the purpose of determining the state of compliance with the programmatic or contractual requirements of the department. The department may revoke deemed status based on the findings of programmatic and contractual monitoring.

C. The department of health services may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by certified mail, return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule violated.

D. If the person does not respond to the written notice, the department of health services, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.