

STATE BOARD OF EQUALIZATION

Title 16, Chapter 4, State Board of Equalization

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,
R16-115, R16-4-116, R16-4-117



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 11, 2021

SUBJECT: STATE BOARD OF EQUALIZATION
Title 16, Chapter 4, State Board of Equalization

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, R16-115, 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.

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?**

The Board indicates 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, other than the minimal expense to the Board of completing the rulemaking and the expense of implementing the rule. Taxpayers who wish to appeal to the Board a valuation or classification of real or personal property will incur the cost of complying with these rules when making the appeal. The taxpayer incurring the costs appeals to the Board 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 indicates it believes the methods specified in the rulemaking are the least intrusive and least costly possible. The Board indicates it sought alternative methods for providing these services and found none.

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

The Board indicates it is the only state agency directly affected by this rulemaking and will not need to employ an additional FTE to implement and enforce the rule. Taxpayers that appeal to the Board are the only private persons directly affected by the rulemaking. The Board states the 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.

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

The Board indicates it made several changes to the rules between the Notice of Proposed Rulemaking and the and the proposed rule language in the Notice of Final Rulemaking before

the Council for consideration in response to public comments, as outlined in Section 10 of the Preamble. Council staff finds that these changes are not “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 Board held oral proceedings related to these rules on September 29, 2020 in Phoenix and October 1, 2020 in Tucson. Additionally, the Board indicates it received seventeen (17) comments during the public comment period, though not all comments were related to the proposed rules. Copies of the relevant comments and a transcript of oral proceeding are provided by the Board and are included with the final materials for the Council’s reference. As indicated above, the Board incorporated feedback from the comments into the current proposed rule language before the Council.

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

Not applicable. None of the rules 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 Board indicates there is no corresponding federal law.

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
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May 14, 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

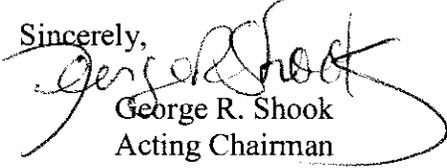
The Arizona State Board of Equalization submits the attached final rule package to the Council for review and approval. The following information is provided for the Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed February 19, 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. No notification was 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. Since then, the SBOE has functioned with procedures that have not been formally promulgated as rules. 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.

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:

Subsection R16-4-101 was changed to add the definition of “Chairman”; add “(AZDOR); change wording “materials” to “evidence”; and add the definition for “SBOE Chairman” to clarify public comment.

Subsection R16-102(E) was changed by replacing the word “Board” with the word “SBOE” for clarity.

Subsection R16-104(A)(2) was changed adding the words “...the taxpayer, or...”.

Subsection R16-104(D) was changed by adding the words “of equalization” and by replacing the word “Board” with the word “SBOE” for clarity and adding the word “are” for correct grammar.

Subsection R16-4-106(B) was changed by replacing the word “Board” with the word “SBOE” for clarity.

Subsection R16-4-107(A) added the words “At the request by either party, ...”; striking the word “entirely”; striking the words “for the convenience of the board and”...; and adding the words “and if such hearing does not conflict with state statutes” to clarify the subsection per public comment. This is not a material change.

Subsection R16-4-107(C) was changed by replacing the word “Review” with the word “Consider” for clarity per request of public comment.

Subsection R16-4-108 was changed by replacing the word “Board” with the word “SBOE” for clarity.

Subsection R16-4-108(B)(1) was changed by adding the words “presiding SBOE member(s)” for clarity.

Subsection R16-4-108(B)(7) was added “7. Petitioner’s rebuttal; and”.

Subsection R16-4-108(B)(8) was changed to renumber the subsection.

Subsection R16-4-108(B)(9) was changed to renumber the subsection.

Subsection R16-4-109 was changed by replacing the word “Board” with the word “SBOE” for clarity.

Subsection R16-4-109(F) was changed by adding the word “relevance”.

Subsection R16-4-109 was changed by replacing the word “Board” with the word “SBOE” for clarity.

Subsection R16-4-110 was changed removed the words “...of proof...” and inserted “... to show by clear and convincing evidence that the valuation or classification of the subject property is incorrect...” for clarity.

Subsection R16-4-115 was changed by deleting the words “Board” and adding “Arizona State Board of Equalization” for clarity.

Subsection R16-4-116 was changed by replacing the word “chairman” with the word “SBOE chairman” to conform to the definition.

Subsection R16-4-117 was changed by replacing the word “Board” with the word “SBOE” for clarity

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

The Notice of Public Rulemaking was published 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 received 17 comments and several observations regarding the proposed rulemaking. Not all comments referenced the proposed rules. Comments were received from SBOE Board members Susan Fair and Daniel Swango, and Department of Revenue employee Jolene Christopherson. Other comments were from Paul Euler, Jodi Bain, Kathryn Wiseman, Gail Sharp, 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 Proposed Rules.

The SBOE follows the dictates of Arizona laws and complies with the Open Meeting and Public Records laws § 38-431 et seq, § 39-121, §41-151. 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. Individual decisions are made at the conclusion of each hearing and hard copy mailed to the parties. Regardless if a party fails to attend a hearing all evidence will be considered by the SBOE. A.R.S. § 42-16161 provides allows the SBOE to accept petitions and evidence by electronic means.

Evidence submitted to the SBOE becomes public information unless redacted by law. On-the-Record hearings are the result of coordination with all parties prior to being scheduled. The wording of the proposed rule has been changed 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 is not in

compliance 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. The comments were sent to the GRRC for review.

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:

An analysis was not submitted nor required.

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

None.

14. 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. Motion
- 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. Board Decision
- R16-4-116. Review or Rehearing of the SBOE Decision
- R16-4-117. Board 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 (AZDOR).

“Motion” aside from parliamentary procedures, “motion” 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 evidence rather than taking oral testimony.

“Petitioner” means a taxpayer or other person, as defined at A.R.S. § 1-215, 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.

“Review” means a quasi-judicial consideration of an appeal or petition.

“SBOE” means:

The State Board of Equalization,

A member of the SBOE,

A panel of members of the SBOE, or

A hearing officer employed by the SBOE under A.R.S. § 41-16155 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 from petitioners regarding the following:

1. A.R.S. § 42-15105. A notice from the assessor regarding valuation or legal classification of new construction, property assessment changes, or changes in use of real property;
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 taxpayer’s right to appeal the decision by the assessor for a petition for review of valuation or legal classification;
4. A.R.S. § 42-16157 or 42-16158. An appeal of the annual valuation or legal classification of property as determined by the assessor or the Department;
5. A.R.S. § 42-16252: The review of a Notice of Proposed Correction issued by the assessor or the Department regarding a property valuation or legal classification;

6. A.R.S. § 42-16254: The review of failure to agree on a Taxpayer Notice of Claim regarding an error in valuation or legal classification by the assessor or the Department;
 7. A.R.S. § 42-19052: The valuation or legal classification by the assessor of personal property; and
 8. A.R.S. § 42-19156: The valuation by the assessor of a mobile home.
- C. The SBOE hears an appeal from an assessor under A.R.S. § 42-16159 regarding an equalization order issued by the Department.
- D. The SBOE hears an appeal from 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. The said rejection notice will be a decision by the SBOE and shall be issued in compliance with all statutory deadlines and preserving any taxpayer's rights to further appeal.

R16-4-103. Representation before the SBOE

The following individuals may appear before the SBOE:

1. An individual representing:
 - a. The individual's interest,
 - b. An estate or trust of which the individual is the legal representative,
 - c. A partnership of which the individual is a partner, or
 - d. A corporation of which the individual is an officer or an authorized representative,
2. An attorney licensed to practice law in Arizona;
3. A property tax agent, as defined at A.R.S. § 32-3651, who has been designated under A.R.S. § 42-16001;
4. An authorized representative from the assessor's office;
5. An authorized representative from the Department; and
6. Other individuals allowed under Arizona Supreme Court Rule 31(d)(13).

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, and 42-16056, the correct petition form is ADOR 82130;
 - b. Under A.R.S. § 42-16157 or § 42-16158, the correct petition form is SBOE EQ200, which is available 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 by the taxpayer, or an authorized representative of the taxpayer, the taxpayer, or the authorized representative of the taxpayer, shall attach to the correct petition form a copy of the current form ADOR 82130AA, 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. The petitioner shall submit:
 - a. A copy of the petition originally filed with the assessor or the Department, as applicable; and
 - b. A copy of the decision by the assessor or the Department regarding the original petition.
 - c. A copy of all attachments and evidence originally filed to the assessor or to the Department.
5. For a petition filed electronically to the SBOE under subsection (A)(3)(a), the petitioner shall submit a copy of all attachments and evidence originally filed to the assessor or to the Department to the SBOE within 5 days of the date of the electronically filed petition; otherwise, the petition will be denied.

6. Evidence previously submitted to the assessor or the Department is not forwarded to the SBOE. Therefore, any evidence the petitioner wants considered shall be submitted to the SBOE by U.S. postal service, hand delivered, or by electronic document upload if available, to arrive at the SBOE office three days prior to the scheduled hearing or provided at the time of hearing. The petitioner shall submit the following copies, prior to or at the 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 (aka CVP property), at least 5 days before the scheduled hearing, the petitioner and respondent shall deliver evidence to the respective parties as follows:
 - i. The petitioner shall submit one copy of the evidence to the Department, and four copies to the SBOE;
 - ii. The Department shall submit one copy of evidence regarding the property valuation or classification to the petitioner and four copies to the SBOE.
7. In compliance with A.R.S. § 42-16056 the SBOE shall consider only issues previously raised with the assessor or the Department, as applicable (see A.R.S. 42-16051 et al for qualifying basis). The SBOE shall admit new or additional evidence only if:
- a. The evidence directly relates to an issue previously raised with the assessor or the Department, as applicable;
 - b. Except as provided in subsection (A)(6)(c), a copy of the new or additional evidence is provided to the assessor or the Department, as applicable; and
 - c. Amended income information, including an amended form ADOR 82300, and the appropriate income and expense form, which are available on the Department's website, are provided to the assessor at least five days before the scheduled hearing.
8. Under the following circumstances, the SBOE will consider requests for multiple dockets 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 al) for the type of request described below:

- a. The multiple parcels constitute a single economic unit;
 - b. The multiple petitions being appealed are 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.
9. The petitioner shall comply with all statutory requirements, including the time within which to file a petition.
- 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.** The time-period within which to file a petition is written in the statutes. It is the petitioner's responsibility to ensure a petition is timely filed.
1. The SBOE shall compute the period for filing a petition according to A.R.S. § 1-243.
 2. The SBOE shall consider a petition timely filed if the petition is properly directed to the SBOE office and:
 - 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.** The SBOE shall respect a designation of confidentiality previously found by the assessor, county board of equalization, or the Department, as applicable. However, both evidence and testimony provided for SBOE consideration are, upon submission, rendered public information.

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. Unless the motion is made at the time of a scheduled hearing, submit proof of service on the other parties to the SBOE.

- 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 telephonically.

R16-4-107. On-the-record Hearing; Failure to Appear

- A.** At the request by either party, the SBOE shall conduct a hearing on-the-record, only if all parties to the hearing agree and if such hearing does not conflict with state statutes.
- B.** If all parties agree to an on-the-record hearing, the SBOE shall review the evidence submitted by the parties, read the evidence into 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 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 ensure the petitioner's evidence is entered in the record before the respondent's evidence is entered 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(s) and parties participating in the proceeding;
 - 2. Administration of oath or affirmation to all parties and witnesses who will offer testimony;
 - 3. 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. Questions by the SBOE; final arguments, if requested by the SBOE;
 - 7. Petitioner's rebuttal; and
 - 8. SBOE deliberation, motion, and 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. If a mixed assessment ratio is required, all parties shall agree to the allocation of the ratios.
- C.** The SBOE may direct a party to submit additional information in the party's possession or control. The SBOE shall allow the party a reasonable time in which to submit the additional information.
- D.** The SBOE may recess or continue a hearing for good cause.
- E.** As required by law, the SBOE shall conduct all deliberation verbally in the presence of all parties in attendance at the hearing.

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 the SBOE determines is consistent with R16-4-104(A)(6) and relevant to the proceeding. The SBOE shall be liberal in admitting evidence and consider objections to the admission 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:

1. The standard of proof in a hearing before the SBOE is a preponderance of the evidence;
2. The petitioner has the burden to show by clear and convincing evidence that the valuation or classification of the subject property is incorrect; and
3. The proponent of a motion shall establish the grounds to support the motion.

R16-4-111. Subpoenas

- A.** The SBOE may issue subpoenas for the attendance of a witness or production of books, records, documents, or other evidence that is not confidential or privileged.
- B.** The SBOE may issue a subpoena at its discretion or upon written request by a party. A party shall include the following in a written request for a subpoena:
 1. Identification of the property, including parcel number if applicable, at issue;
 2. A list or description of all records sought;
 3. A statement showing proper foundation for the request;
 4. The name and address of the custodian of the records sought or all persons to be subpoenaed;
 5. The date, time, and place to appear or to produce the records; and

6. The name, address, and telephone number of the party requesting the subpoena.
- C. If the SBOE issues a subpoena upon the request of a party, the requesting party shall:
1. Ensure the subpoena is served no later than five business days before the time specified in the subpoena for attendance of a witness or production of records;
 2. Ensure the person serving the subpoena provides proof of service to the SBOE; and
 3. Pay the cost to serve the subpoena.

R16-4-112. Records of a Hearing

- A.** The SBOE shall make a recording of every hearing. If a person makes a request, the SBOE shall provide a copy of a hearing recording on its website, or any other electronic means, within one business day 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.** A party to a proceeding may, at the party's expense, 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, 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 at least 48 hours before the scheduled start of the hearing.
- B.** If the petitioner submits a written notice of withdrawal to the SBOE fewer than 48 hours before the scheduled start of a hearing, the SBOE shall accept the notice of withdrawal at the hearing.
- C.** The petitioner may withdraw an appeal by providing written or oral notice to the SBOE at the hearing.

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. It is during a scheduled hearing where an absent party fails to appear after proper notice, or
 3. It is by written motion where a copy is provided to all parties.
- B.** If a member of the SBOE is determined to have received ex parte communication regarding an appeal, the member shall be recused from participating in the appeal.

R16-4-115. Arizona State Board of Equalization Decision

- A.** The SBOE shall issue a written decision within a reasonable time after the hearing or, as authorized under A.R.S. § 42-16164, after continuing the hearing for additional deliberation.
- 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.
- D.** The SBOE's decision is final 60 days after it is mailed under subsection (C) unless an appeal is taken under A.R.S. § 42-16203 or § 42-16254(G).

R16-4-116. Review of a SBOE Decision

- A.** As provided under A.R.S. § 42-16164(A), the SBOE Chairman may review a SBOE decision to ensure the decision is consistent with due process for all parties. In conducting the review, the SBOE Chairman shall assess whether:
1. The findings of fact, conclusions of law, and decision are supported by the evidence or are contrary to law;

2. The hearing involved irregularity, abuse of discretion, or misconduct by a party;
 3. The hearing involved accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence exists that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurred at the hearing or during the progress of the proceedings;
 6. The decision was the result of passion, bias, or prejudice; or
 7. The decision was arbitrary and capricious.
- B.** The SBOE Chairman shall complete the review provided under A.R.S. § 42-16164(A) within 30 days after the decision is issued under R16-4-115.
- C.** If the SBOE Chairman determines the SBOE decision is inconsistent with due process for all parties, the SBOE shall:
1. Provide written notice of this determination to all parties including the grounds listed in subsection (A) on which the determination is based;
 2. Stay enforcement of the SBOE's decision issued under R16-4-115 pending further review of the decision; and
 3. Within 30 days after providing the notice under subsection (C)(1), take additional testimony or review newly discovered material evidence, amend findings of fact or conclusions of law, or make new findings or conclusions, and issue a new decision.
- D.** Under A.R.S. § 42-16169, the written decision issued under subsection (C)(3) becomes final 60 days after it is mailed to all parties and the Department.

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, among other things:
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.

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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:

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There will be no effect on state revenues.

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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 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?

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 47-11004
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; info@proptaxeval.com; neil_r_wolfe@yahoo.com; William Ryan <WILLIAM@wayfindertaxrelief.com>; Droubie, Suzanne @ Tucson <suzanne.droubie@cbre.com>;
TaxDetective Support <support@taxdetective.com>; dproelke@gmail.com; rickedwards@mipoer.com; appeals@integrapiets.com; Specht, Beth <beth.specht@ryan.com>; Domingos Santos <ds@santostawpolic.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>

...hoping 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 <suzanne.drouble@cbre.com>, TaxDetective Support <support@taxdetective.com>, <dproelke@gmail.com>, <trickedwards@integralpts.com>, Specht, Beth <beth.specht@ryan.com>, Domingos Santos <ds@santosiawpbc.com>, <ccarison@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>

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

NOTICE: This e-mail (and any attachments) may contain PRIVILEGED OR CONFIDENTIAL information and is intended only for the use of the specific individual(s) to whom it is addressed. It may contain information that is privileged and confidential under state and federal law. This information may be used or disclosed only in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this e-mail and its attachments. If you have received this e-mail in error, please immediately notify the sender named above by reply e-mail, and then delete the original e-mail. Thank you.

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2 attachments

 **Agenda 9 27 2020.pdf**
35K

 **Public Comment Meeting.pdf**
47K

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 pnel 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.

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.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 15, Transportation



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 10, 2021

SUBJECT: Department of Health Services
Title 9, Chapter 7, Article 1

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 7 regarding radiation control. The report covers Article 1, regarding general provisions.

In the last 5YRR of these rules, the Department indicated it would revise the rules to address compatibility issues with federal requirements of the NRC. The Department addressed the changes in two separate rulemakings, one in July 2018 and another in May 2020.

Proposed Action

The Department indicates it plans to amend several of the rules to improve overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. As mentioned in previous reports on this Chapter, the Department indicates it does not make sense to try to revise the Articles in Chapter 7 piecemeal. Instead, the Department plans to complete a rulemaking once all the Articles in the Chapter have been reviewed. The last 5YRR for the Chapter is due in December 2021.

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 review indicates that pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 15 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7. The Department indicates that no economic impact statements were available to the Department for the period prior to the recodification. The rule makings since the recodification were made through expedited rulemaking and no economic impact statements were required. The Department believes that any estimated economic impact as a result of the changes to the rules were as anticipated and that the changes may have provided a significant benefit to public health and safety.

They state that as of April 8, 2021, the Department has issued 7,712 registrations and 352 licenses to persons. During 2020, the Department conducted 728 enforcement actions, which resulted in no revocations or suspensions, and collected \$42,500 in civil penalties under the rules in the Chapter.

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 substantive content of the rules is the minimum necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules. They indicate that although the issues described in the review may impose a slight regulatory burden, many of them cannot be changed because they are required to be the same as federal regulations. Therefore, the Department believes that the rules, with this constraint, impose the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates 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 following rules are not clear concise, and understandable:

R9-7-101 - Scope and Incorporated Materials
R9-7-102 - Definitions
R9-7-103 - Exemptions
R9-7-104 - Prohibited Uses
R9-7-105 - Quality Factors for Converting Absorbed Dose to Dose Equivalent
R9-7-107 - Misconduct

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

Yes, the Department indicates most of the rules are consistent with other rules and statutes, with the exception of the following:

R9-7-102 - Definitions
R9-7-103 - Exemptions

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates while most of the rules are effective in achieving their objectives, there are multiple rules that could be revised to improve their overall effectiveness. However, many of the changes cannot be made due to the wording match requirements of the U.S. Nuclear Regulatory Commission (NRC).

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 the corresponding federal laws; 21 CFR 1010.2, 21 CFR 1020.40, 39 CFR 111.1, 40 CFR 190, 40 CFR 191, 49 CFR 107, 49 CFR 107.109, 49 CFR 107.111, 49 CFR 107.113, 49 CFR 171, 49 CFR 171.2, 49 CFR 171.3, 49 CFR 172, 49 CFR 172.200, 49 CFR 173, 49 CFR 173.1, 49 CFR 173.3, 49 CFR 173.4, 49 CFR 173.401, 49 CFR 173.403, 49 CFR 174, 49 CFR 175, 49 CFR 175.3, 49 CFR 175.10, 49 CFR 176, 49 CFR 176.3, 49 CFR 176.5, 49 CFR 176.11, 49 CFR 176.24, 49 CFR 176.27, 49 CFR 177, 49 CFR 177.801, 49 CFR 178, 49 CFR 179, and 49 CFR 180.

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?**

These rules were recodified into 9 A.A.C. 7, Article 1, without any substantive changes, from 12 A.C.C. 1, Article 1, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation in compliance with Laws

2017, Ch. 313, and Laws 2018, Ch. 234. Except for R12-1-101, R12-1-102, and R12-1-103, the rules in 12 A.A.C. 1, Article 1, were all adopted before July 29, 2010. However, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

Upon review, council staff agrees the Department complies with A.R.S. § 41-1037. Due to the majority of the rules being adopted before July 29, 2010, compliance with A.R.S. § 41-1037 is unnecessary. As the department states, A.R.S. § 30-672 says that “[t]he department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials.” Pursuant to A.R.S. § 41-1037(A)(2), an agency may use a license other than a general permit if “[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.” The issuance of an alternative type of permit, license or authorization here appears to be specifically authorized by A.R.S. § 30-672. Therefore, the Department is in compliance with the requirements of A.R.S. § 41-1037.

11. Conclusion

As mentioned above, the Department proposes to amend several of the rules to improve overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. As mentioned in previous reports on this Chapter, the Department indicates it does not make sense to try to revise the Articles in Chapter 7 piecemeal. Instead, the Department plans to complete a rulemaking once all the Articles in the Chapter have been reviewed. The last 5YRR for the Chapter is due in December 2021.

Council staff recommend approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 22, 2021

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. 7, Article 1, 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. 7, Article 1, General Provisions, which is due on April 30, 2021.

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,

A handwritten signature in black ink, appearing to read 'Robert Lane', written over a light gray background.

Robert Lane
Director's Designee

RL:rms

Enclosures

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

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Health and Wellness for all Arizonans



Arizona Department of Health Services
Five-Year-Review Report
Title 9. Health Services
Chapter 7. Department of Health Services
Radiation Control
Article 1. General Provisions
April 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-671, 30-672, 30-672.01, 30-673

2. The objective of each rule:

Rule	Objective
R9-7-101	To establish to whom the rules in 9 A.A.C. 7 apply. To specify where materials incorporated by reference may be found.
R9-7-102	To specify the definitions for radiation devices and radioactive materials regulated as described under 9 A.A.C. 7.
R9-7-103	To specify the persons who are exempt from the provisions of 9 A.A.C. 7.
R9-7-104	To specify prohibited devices and establish the uses for which ionizing radiation or non-ionizing radiation may not be used.
R9-7-105	To specify the quality factors for converting absorbed dose to dose equivalent.
R9-7-106	To specify how units of radioactivity are expressed in the rules.
R9-7-107	To specify what actions constitute misconduct and the consequences of misconduct.

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
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules. However, many of the identified items cannot be changed due to requirements that wording match that of the regulations of the U.S Nuclear Regulatory Commission (NRC).

4. Are the rules consistent with other rules and statutes?

Yes No X

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
R9-7-102	In the definition of “Radiation Safety Officer,” the citation should be to R9-7-101, not R9-7-10.
R9-7-102 and R9-7-103	The citations to federal regulations in these two rules, including the dates in the rules, are shown below and need to be updated: 21 CFR 1010.2, revised April 1, 2019; 21 CFR 1020.40, revised April 1, 2019; 39 CFR 111.1, revised July 1, 2007; 40 CFR 190, revised December 1, 1979; 40 CFR 191, revised December 20, 1993; 49 CFR 107, revised April 19, 2017; 49 CFR 107.109, revised October 1, 2007; 49 CFR 107.111, revised October 1, 2007; 49 CFR 107.113, revised October 1, 2007; 49 CFR 171, revised April 19, 2017; 49 CFR 171.2, revised October 1, 2007; 49 CFR 171.3, revised October 1, 2007; 49 CFR 172, revised November 23, 2015; 49 CFR 172.200, revised October 1, 2007; 49 CFR 173, revised March 6, 2019; 49 CFR 173.1, revised October 1, 2007; 49 CFR 173.3, revised October 1, 2007; 49 CFR 173.4, revised October 1, 2007; 49 CFR 173.401, revised October 1, 2007; 49 CFR 173.403, revised January 8, 2015; 49 CFR 174, revised February 28, 2019; 49 CFR 175, revised October 18, 2018; 49 CFR 175.3, revised October 1, 2007; 49 CFR 175.10, revised October 1, 2007; 49 CFR 176, November 7, 2018; 49 CFR 176.3, revised October 1, 2007; 49 CFR 176.5, revised October 1, 2007; 49 CFR 176.11, revised October 1, 2007; 49 CFR 176.24, revised October 1, 2007; 49 CFR 176.27, revised October 1, 2007; 49 CFR 177, revised September 25, 2013; 49 CFR 177.801, revised October 1, 2007; 49 CFR 178, revised November 7, 2018; 49 CFR 179, revised September 25, 2018; and 49 CFR 180, revised March 30, 2017.

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 No X

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
Multiple	The rules could be clearer if minor grammatical and formatting corrections were made. To comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967, most of the requirements in this Article must be consistent with requirements of the U.S. Nuclear Regulatory Commission (NRC). Therefore, although some wording could be clearer or more concise, the Department cannot make these changes without approval by the NRC.
R9-7-101	The rule would be clearer if subsection (A) contained citations to Sections in the Chapter where exceptions were stated.
R9-7-102	The following defined terms are not used in the Chapter and could be removed from the rule: “accelerator produced material”; “chelating agent”; “Criticality Safety Index”, although “CSI” is used in R9-7-1509(C) and (E) and R9-7-1510(C)(5) and (6); “current license or

registration”; “explosive material”; “fail-safe characteristics”; “former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities”; “Indian Tribe”; “individual monitoring equipment”; “lost or missing licensed or registered source of radiation,” although “lost or missing licensed material” is defined in Article 19 and used as “lost or missing category 1” and “lost or missing category 2” in R9-7-1981; “low-level waste”, although “low-level radioactive waste” is and should be used and defined; “major processor”; “medical dose”; “mineral logging”; “natural radioactivity”; “NRC Document Control Desk”; “pyrophoric liquid” and “pyrophoric solid”; “site boundary”; “source material milling”; “TODE”; “waste handling licensees”; “WL”; and “WLM”.

The term “regulations of the U.S. Department of Transportation” is only used as defined once in the Chapter, but it is not needed and should be removed because the various regulations listed are cited independently in multiple other locations in the Chapter where they are applicable.

The following defined terms are used in only one location in the Chapter and could be defined/described in place if allowed by the NRC: “A1” is used in R9-7-1512(C)(3)(a). “Certifiable cabinet x-ray system” is used in R9-7-1140(A). “Certificate holder” is used in R9-7-308(H). “Consortium” is used in R9-7-311(G), and contains the undefined terms “medical use licensees,” “educational institution,” “federal facility,” and “medical facility”. “Effluent release” is used in R9-7-1219(B). “Generally applicable environmental radiation standards” is used in R9-7-444(B)(1)(d). “Impound” is used in R9-7-1220. “Positron Emission Tomography radionuclide producing facility” is used in the definition of “consortium.” “Radioactive marker” is used in R9-7-1717(4). “Special nuclear material in quantities...” is only used in R9-7-101. “Unrefined and unprocessed ore” is used in R9-7-302(B).

The following defined terms are only used in one Article and should be defined in the Section within the Article containing definitions applicable to the Article: “Analytical x-ray equipment” is also defined in R9-7-802, which contains definitions for terms used in Article 8, the only Article in which the term is used. “Approved individual” is also defined in R9-7-1905, which contains definitions for terms used in Article 19, the only Article in which the term is used. “Background investigation” is also defined in R9-7-1905, which contains definitions for terms used in Article 19, the only Article in which the term is used. “Collective dose” is only used in R9-7-413(B)(1)(f) and R9-7-461(E) and should be defined in Article 4. “Entrance or access point” is only used in R9-7-420, R9-7-421, and R9-7-422. “External dose” is only used in Article 4. “Individual monitoring” and “individual monitoring device” are only used in Article 4. “Internal dose” and “lens equivalent dose” are used only in Article 4. “Local components” is also defined in R9-7-802 and only used in Article 8. “Logging supervisor” and “logging tool” are only used in Article 17. “Source changer” is only used in Article 5. “Subsurface tracer study” is only used in Article 17. “Very high radiation area” is only used in Article 4. “Well-logging” is only used in Article 17 and in definitions that belong in Article 17.

The following terms are defined in both this rule and another and should only be defined in one location: “authorized medical physicist” also in both R9-7-702 and R9-7-902; “authorized nuclear pharmacist” also in R9-7-702; “authorized user” also in R9-7-702; “enclosed beam x-ray system” also in R9-7-802 and used in both R9-7-419(B)(9) and R9-7-803; and “Sealed Source and Device Registry” also in R9-7-702 and used in Articles 3 and 7. Other issues were also identified. “A2” is used in the definition of LSA, which is also included as part of the definition. “Act” is also defined in R9-7-1905 as the Atomic Energy Act of 1954, and the term is part of many other cited federal Acts. Rather than use this term to mean A.R.S. Title 30, Chapter 4, the statutory citation should be used. In the definition of “Associate Radiation Safety Officer,” the term “NRC” should be used rather than “Commission.” The listing of “PET” in the definitions could be removed if the term were

	<p>included in the definition of “Positron Emission Tomography (PET)” as an alternate defined term.</p> <p>In addition, a number of other issues were identified. The word “area” is used as part of the definition for “airborne radioactivity area,” “radiation area,” “restricted area,” “unrestricted area,” and “very high radiation area”. “Certificate of Compliance” should either be capitalized or not, not used both ways. “Certified cabinet x-ray system” may not be needed. The term “certified or certifiable cabinet x-ray system” is what is used in R9-7-1140 and should be changed in the rule or defined in place. “Cabinet x-ray unit” is not defined but is used in R9-7-501 and R9-7-1102 definitions. “Embryo/fetus” also used in the rules as “embryo or fetus,” and one term should be used consistently. A definition for “exhibit” is unnecessary. “Hazardous waste” is only used in R9-7-306(H)(4) and R9-7-438.01(B), which are fairly duplicative. “Health care institution” is used only in R9-7-705(C) and is inconsistent with the definition in ARS § 36-401. “Human use” is only used in R9-7-611.01(A)(2) and R9-7-902(B)(2) and could be described in both locations rather than being defined to avoid confusion with human subjects research. The definition of “license” is problematic because there is a lack of specificity and an inconsistency with the definition in Article 19. From the definition of “licensed practitioner,” it is unclear whether this can be someone licensed in another state, or whether these individuals must be licensed under A.R.S. Title 32. In the definition of “monitoring,” “radiation monitoring” (only used in R9-7-1702(A)(3)) and “radiation protection monitoring” (not used in the rules) are included in the definition. However, the definition is required to be word-for-word the same as the federal regulations. “Open beam system” not used as defined, but variations such as “open beam fluoroscopic system” and “open beam x-ray system” are used and should be revised in the rules to be consistent with the defined term. – lots of variations on the term. “Personal supervision” should be listed before “personnel dosimeter” and not use part of the defined term in the definition. The definition of “preceptor” would be clearer if the recently added “ophthalmic physicist” were included. The rules should use either “calendar quarter” or “quarter” rather than both and define whichever term is to be used. The same is true for “radiation dose” and “dose.” The definition of “registrant” should be changed to clarify whether or not both conditions in the definition need to be satisfied. The rule would be clearer if the cross-references in the definition of “registration” were more specific. The term “Research and Development” does not need to be capitalized. The phrase “(see Exposure)” in the definition of “Roentgen” is not needed and could be removed. In the definition of “safety system,” the term “radiation safety” is undefined. There is a definition of “shielded position” but not of “unshielded position,” which is used in R9-7-501. The defined term “these rules” is not needed, since the citation can be to “this Chapter.” “Total Effective Dose Equivalent” does not need to be capitalized, nor does “Total Organ Dose Equivalent,” which is only used in R9-7-404(B). “TODE” is not needed at all because it is not used in the rules. “Uranium – natural, depleted, enriched” is not used in the rules as the defined term. Nor is “enriched uranium,” although the sub-defined terms “natural uranium” and “depleted uranium” are used and should be independently defined as stated. Terms such as “well-bore” and “wireline” are specific to the rules in Article 17 and could be defined there. The definition of “worker” should not include the word “work.”</p>
R9-7-103	<p>The rule could be clearer if the terms “common and contract carriers,” “freight forwarders,” and “warehousemen” in subsection (A) were defined or described. In subsection (B), the rule would be clearer and more concise if “prime contractors” in subsections (B)(1) through (3) were defined or described, the defined term “NRC” were used in place of the “U.S. Nuclear Regulatory Commission” in subsection (B) and “Nuclear Regulatory Commission” in subsection (B)(4), and “the state” in subsection (B)(4) were better identified as being “the Department.” In subsection (D), “by a State” should be changed to be specific to Arizona, stating “licensed under A.R.S. Title 32.” The rule could be more concise if “part” were removed in “10 CFR part 35.”</p>

R9-7-104	In subsection (B), the rule would be clearer if a citation to A.R.S. § 13-2505(E) replaced “as specifically authorized by law.”
R9-7-105	In the footnotes (a) and (b), the term “phantom” is used and should be defined in R9-7-102, rather than in R9-7-602.
R9-7-107	While the term “misconduct” is used as a title and defined in the rule, it is not used elsewhere in the rule. The rule would be clearer and more concise if the title were changed to “Prohibited Conduct” and subsection (C) were removed. The rule would be more understandable if the term “Board” in subsection (B) were replaced with “the Department.” In subsection (D), the rule would be more understandable if the applicable Section(s) in Article 12 were specified.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 1 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though two of the rulemakings were in 12 A.A.C. 1. No economic impact statements (EISs) are available to the Department for these two rulemakings, so the economic impact of the Sections made/revised in the rulemakings was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking, including review of the changes made. If a rule included in one of these rulemakings was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking. Since the recodification, two additional rulemakings were made through expedited rulemaking, for which no economic impact statements were required.

As of April 8, 2021, the Department has issued 7,712 registrations and 352 licenses to persons. During 2020, the Department conducted 728 enforcement actions, which resulted in no revocations or suspensions, and collected \$42,500 in civil penalties under the rules in the Chapter.

Three rules (R9-7-104, R9-7-105, and R9-7-106) were last amended in a rulemaking effective May 9, 2003. The changes included removing passive language without changing substantive content in R9-7-104, removing redundant language in R9-7-105, and replacing language with a cross-reference in R9-7-106. The Notice of Final Rulemaking stated that these changes were not expected to cause any increased economic burden. The Department believes that the economic impact is as estimated and that the changes may have provided a significant benefit through increased clarity and conciseness.

One rule, R9-7-107, was added in a rulemaking effective July 3, 2004, “in an attempt to regulate any individual’s conduct involving radiation sources.” The summary of the economic, small business, and consumer impact in the Preamble stated that this rule “could be part of an enforcement action, as defined in Article 12,”

which “may result in a civil penalty.” However, this result would be due to a licensee’s or registrant’s actions in “the intentional, nonmedical radiation exposure of another person or contamination of a site.” The Department believes that the economic impact is as estimated and that the changes may have provided a significant benefit to public health and safety.

Another rule, R9-7-103, was last revised in a rulemaking effective July 12, 2018, through expedited rulemaking, to make the rules compatible with current national radiation safety standards of the NRC to comply with the Agreement. The change was to add a subsection to clarify requirements for physicians transporting licensed material for use in the practice of medicine. The Department stated that this change was consistent with the purpose of A.R.S. § 41-1027 in that the change to R9-7-103 did not increase the cost of regulatory compliance, did not increase a fee, or reduce a procedural right of regulated persons, and adopted, without material change, federal statutes and regulations. The Department believes that the economic impact is as estimated.

The remaining two rules in the Article, R9-7-101 and R9-7-102, were last revised in a rulemaking effective May 6, 2020. The changes were again made through expedited rulemaking to make the rules compatible with current standards of the NRC to comply with the Agreement. In R9-7-101, methods to access incorporations by reference were updated to make it easier for regulated entities to find them. In R9-7-102, definitions were added and citations to incorporations by reference were revised to make the rules easier to understand and consistent with federal requirements. The Department again stated that these changes were consistent with the purpose of A.R.S. § 41-1027 in that the changes did not increase the cost of regulatory compliance, did not increase a fee, or reduce a procedural right of regulated persons, and adopted, without material change, federal statutes and regulations. The Department believes that the economic impact is as estimated.

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 the intention of revising rules in the Article to address compatibility issues with federal requirements of the U.S. Nuclear Regulatory Commission. The Department addressed the described compatibility issues in rulemakings effective July 2018 and May 2020.

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 in Article 1 provide information that is applicable to other Articles in the Chapter, including how to access incorporations by reference, definitions, specification of those persons exempt from the rules, prohibited uses, methods to convert terms used in the rules, and what constitutes misconduct. As such, they provide a benefit

to the regulated entities and the general public. By providing this information and enabling the Department to provide oversight sources of radiation, the Department believes that the probable benefits of the rules in Article 1 outweigh the probable costs of the rule. The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules. Although the issues described in this report may impose a slight regulatory burden, many of them cannot be changed because they are required to be the same as the federal regulations. Therefore, the Department believes that the rules, with this constraint, impose the least burden and costs to regulated persons 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)?

The rules rely on the following federal regulations, but are not more stringent than the regulations:

21 CFR 1010.2, 21 CFR 1020.40, 39 CFR 111.1, 40 CFR 190, 40 CFR 191, 49 CFR 107, 49 CFR 107.109, 49 CFR 107.111, 49 CFR 107.113, 49 CFR 171, 49 CFR 171.2, 49 CFR 171.3, 49 CFR 172, 49 CFR 172.200, 49 CFR 173, 49 CFR 173.1, 49 CFR 173.3, 49 CFR 173.4, 49 CFR 173.401, 49 CFR 173.403, 49 CFR 174, 49 CFR 175, 49 CFR 175.3, 49 CFR 175.10, 49 CFR 176, 49 CFR 176.3, 49 CFR 176.5, 49 CFR 176.11, 49 CFR 176.24, 49 CFR 176.27, 49 CFR 177, 49 CFR 177.801, 49 CFR 178, 49 CFR 179, and 49 CFR 180.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

In March 2018, these rules were recodified into 9 A.A.C. 7, Article 1, without any substantive changes, from 12 A.A.C. 1, Article 1, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation in compliance with Laws 2017, Ch. 313, and Laws 2018, Ch. 234. Except for R12-1-101, R12-1-102, and R12-1-103, the rules in 12 A.A.C. 1, Article 1, were all adopted before July 29, 2010. However, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department is to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The minor items and possible changes described in paragraphs 4 and 6 are not substantive. As discussed with the Council on the occasion of another 5YRR, it does not make sense in most cases, and is certainly not effective or

efficient, to try to revise the Articles in Chapter 7 piecemeal. The Department plans to evaluate the entire Chapter, after finishing reviews of all the Articles in the Chapter, to determine whether a rulemaking is necessary and, if so, to establish a time-frame to complete the rulemaking. According to the Department's current schedule, the last five-year report for the Chapter is due in December 2021. Based on the reviews of those Articles that have been completed, the Chapter may need to be extensively revised and reorganized.

ARTICLE 1. GENERAL PROVISIONS

Section

- R9-7-101. Scope and Incorporated Materials
- R9-7-102. Definitions
- R9-7-103. Exemptions
- R9-7-104. Prohibited Uses
- R9-7-105. Quality Factors for Converting Absorbed Dose to Dose Equivalent
- R9-7-106. Units of Activity
- R9-7-107. Misconduct

ARTICLE 1. GENERAL PROVISIONS

R9-7-101. Scope and Incorporated Materials

- A. Except as otherwise specifically provided, this Chapter applies to all persons who receive, possess, use, transfer, own, or acquire any source of radiation.
- B. This Chapter does not apply to any person that is subject to regulation by the Nuclear Regulatory Commission.
- C. State control of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the U.S. Nuclear Regulatory Commission, signed March 30, 1967 and incorporated by reference. This incorporated material contains no later editions or amendments, and together with all other incorporated materials in this Chapter, is available on the Arizona Department of Health Services, Bureau of Radiation Control website at <https://www.azdhs.gov/documents/licensing/radiation-regulatory/arizona-agreement.pdf>.
- D. Federal regulations incorporated by reference in this Chapter are available from the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and <https://www.govinfo.gov/app/collection/CFR>.

R9-7-102. Definitions

Terms defined in A.R.S. § 30-651 have the same meanings when used in this Chapter, unless the context otherwise requires. Additional subject-specific definitions are used in other Articles.

“A1” means the maximum activity of special form radioactive material permitted in a type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A.

“A2” means the maximum activity of radioactive material, other than special form radioactive material, low specific activity (LSA) material, and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedure prescribed in 10 CFR 71, Appendix A.

“Absorbed dose” means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

“Accelerator” means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, “particle accelerator” is an equivalent term.

“Accelerator produced material” means any material made radioactive by irradiating it in a

particle accelerator.

“Act” means A.R.S. Title 30, Chapter 4.

“Activity” means the rate of disintegration, transformation, or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

“Adult” means an individual 18 or more years of age.

“Agreement State” means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274(b) of the Atomic Energy Act of 1954, as amended (73 Stat. 689). “Nonagreement State” means any other state.

“Airborne radioactive material” means any radioactive material dispersed in the air in the form of aerosols, dusts, fumes, mists, vapors, or gases.

“Airborne radioactivity area” means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:

In excess of the derived air concentrations (DACs) specified in Appendix B, Table I of Article 4 of these rules; or

That an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

“ALARA” means as low as is reasonably achievable, making every reasonable effort to maintain exposures to radiation as far below the dose limits in these rules as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

“Analytical x-ray equipment” means equipment used for x-ray diffraction or x-ray-induced fluorescence analysis.

“Analytical x-ray system” means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials.

“Annual” means done or performed yearly. For purposes of Chapter 1, any required activity done or performed within plus or minus two weeks of the annual due date is considered done or performed in a timely manner.

“Approved individual” means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with subpart B of this part and who has completed the training required by 10 CFR 37.43(c).

“Associate Radiation Safety Officer” means an individual who:

Meets the requirements in 10 CFR 35.50 and 10 CFR 35.59; and

Is currently identified as an Associate Radiation Safety Officer for the types of use of byproduct material for which the individual has been assigned duties and tasks by the Radiation Safety Officer on:

A specific medical use license issued by the Commission or an Agreement State;
or

A medical use permit issued by a Commission master material licensee.

“Authorized medical physicist” means an individual who meets the requirements in R9-7-711; or is identified as an authorized medical physicist or teletherapy physicist on:

A specific medical use license issued by the Department, the NRC, or another Agreement State;

A medical use permit issued by a NRC master material licensee;

A permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee; or

A permit issued by a NRC master material license broad scope medical use permittee.

“Authorized nuclear pharmacist” means a pharmacist who meets the requirements in R9-7-712; or is:

Identified as an authorized nuclear pharmacist on a specific license issued by the Department, the NRC, or another Agreement State that authorizes medical use or the practice of nuclear pharmacy;

Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

Identified as an authorized nuclear pharmacist on a permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

Identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

Designated as an authorized nuclear pharmacist in accordance with R9-7-311(G).

“Authorized user” means a physician, dentist, or podiatrist who meets the requirements in R9-7-719, R9-7-723, R9-7-727, R9-7-728, or R9-7-744; or is identified as an authorized user on:

The Department, NRC, or another Agreement State license that authorizes the medical use of radioactive material;

A permit issued by a NRC master material licensee that is authorized to permit the medical use of radioactive material;

A permit issued by the Department, the NRC, or another Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

A permit issued by a NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

“Background investigation” means an assessment of an individual’s prior actions and experience conducted by a licensee or applicant, to support the determination of the individual’s trustworthiness and reliability in accordance with 10 CFR 37.25.

“Background radiation” means radiation from cosmic sources; not technologically enhanced naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of a licensee. “Background radiation” does not include sources of radiation regulated by the Department.

“Becquerel” (Bq) means the International System (SI) unit for activity and is equal to 1 disintegration per second (dps or tps).

“Bioassay” means the determination of kinds, quantities, or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, “radiobioassay” is an equivalent term.

“Brachytherapy” means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary or interstitial application.

“Byproduct material” means:

Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore

bodies depleted by these solution extraction operations do not constitute “byproduct material” within this definition;

Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; or any material that, has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; and

Any discrete source of naturally occurring radioactive material, other than source material, that the NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security and; before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

“Calendar quarter” means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant shall not change the method of determining calendar quarters for purposes of this Chapter except at the beginning of a calendar year.

“Calibration” means the determination of:

The response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

The strength of a source of radiation relative to a standard.

“Carrier” means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

“Certifiable cabinet x-ray system” means an existing uncertified x-ray system that meets or has been modified to meet the certification requirements specified in 21 CFR 1020.40, revised April 1, 2019, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“Certificate holder” means a person who has been issued a certificate of compliance or other package approval by the Department or NRC.

“Certificate of Compliance” (CoC) means the certificate issued by the NRC under 10 CFR 71, Subpart D, which authorizes the design of a package for the transportation of radioactive material.

“Certified cabinet x-ray system” means an x-ray system that has been certified in accordance with

21 CFR 1010.2, as being manufactured and assembled on or after April 10, 1975, in accordance with the provisions of 21 CFR 1020.40, both sections revised April 1, 2019, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

“CFR” means Code of Federal Regulations.

“Chelating agent” means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

“Civil penalty” means the monetary fine which may be imposed on licensees by the Department, pursuant to A.R.S. § 30-687, for violations of the Act, this Chapter, or license conditions.

“Collective dose” means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

“Committed dose equivalent” (HT,50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

“Committed effective dose equivalent” (HE,50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($HE,50 = \sum w_T HT,50$).

“Consortium” means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

“Contamination” means the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm^2 ($1 \times 10^{-5} \text{ } \mu\text{Ci/cm}^2$) for beta and gamma emitters and low toxicity alpha emitters, or 0.04 Bq/cm^2 ($1 \times 10^{-6} \text{ } \mu\text{Ci/cm}^2$) for all other alpha emitters.

“Fixed contamination” means contamination that cannot be removed from a surface during normal conditions of transport.

“Non-fixed contamination” means contamination that can be removed from a surface during normal conditions of transport.

“Criticality Safety Index (CSI)” means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages, overpacks or freight containers containing fissile material during transportation. Determination of the criticality safety index is described in 10 CFR 71.22, 10 CFR

71.23, and 10 CFR 71.59. The criticality safety index for an overpack, freight container, consignment or conveyance containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, consignment or conveyance.

“Curie” means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of $3.7E + 10^{10}$ transformations per second (tps).

“Current license or registration” means a license or registration issued by the Department and for which the licensee has paid the license or registration fee for the current year according to R9-7-1304.

“Deep-dose equivalent” (Hd), which applies to external whole body exposure, is the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm²).

“Depleted uranium” means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

“Discrete source” means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

“Dose” is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, “radiation dose” is an equivalent term.

“Dose equivalent” (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

“Dose limits” means the permissible upper bound of radiation doses established in accordance with these rules. For purposes of these rules, “limits” is an equivalent term.

“Dosimeter” (See “Individual monitoring device”)

“Effective dose equivalent” (HE) means the sum of the products of the dose equivalent to each organ or tissue (HT) and the weighting factor (wT) applicable to each of the body organs or tissues that are irradiated ($HE = \sum HTwT$).

“Effluent release” means any disposal or release of radioactive material into the ambient atmosphere, soil, or any surface or subsurface body of water.

“Embryo/fetus” means the developing human organism from conception until the time of birth.

“Enclosed beam x-ray system” means an analytical x-ray system constructed in such a way that access to the interior of the enclosure housing the x-ray source during operation is precluded except through bypassing of interlocks or other safety devices to perform maintenance or

servicing.

“Enclosed radiography” means industrial radiography conducted by using cabinet radiography or shielded room radiography.

“Cabinet radiography” means industrial radiography conducted by using an x-ray machine in an enclosure not designed for human admittance and which is so shielded that every location on the exterior meets the conditions for an “unrestricted area.”

“Shielded room radiography” means industrial radiography conducted using an x-ray machine in an enclosure designed for human admittance and which is so shielded that every location of the exterior meets the conditions for an “unrestricted area.”

“Entrance or access point” means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

“Exhibit” for purposes of these rules, is equivalent in meaning to the word “Schedule” as found in previously issued rules, current license conditions, and regulation guide.

“Explosive material” means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

“Exposure” means:

Being subjected to ionizing radiation or radioactive materials.

The quotient of dQ by dm where “ dQ ” is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass “ dm ” are completely stopped in air. The special unit of exposure is the roentgen (R).

“Exposure rate” means the exposure per unit of time.

“External dose” means that portion of the dose equivalent received from any source of radiation outside the body.

“Extremity” means the hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

“Fail-safe characteristics” means a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

“FDA” means the United States Food and Drug Administration.

“Field radiography” means industrial radiography, utilizing a portable or mobile x-ray system, which is not conducted in a shielded enclosure.

“Field station” means a facility where radioactive sources may be stored or used and from which

equipment is dispatched to temporary job sites.

“Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities” means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

“Generally applicable environmental radiation standards” means standards issued by the U.S. Environmental Protection Agency (EPA), 40 CFR 190, revised December 1, 1979, and 40 CFR 191, revised December 20, 1993, incorporated by reference, and available under R9-7-101, under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material. This incorporated material contains no future editions or amendments.

“Gray” (Gy) means the International System (SI) unit of absorbed dose and is equal to 1 joule per kilogram. One gray equals 100 rad.

“Hazardous waste” means those wastes designated as hazardous in A.R.S. § 49-921(5).

“Healing arts” means the practice of medicine, dentistry, osteopathy, podiatry, chiropractic, and veterinary medicine.

“Health care institution” means every place, institution, or building which provides facilities for medical services or other health-related services, not including private clinics or offices which do not provide overnight patient care.

“High radiation area” means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

“Human use” means the internal or external administration of radiation or radioactive materials to human beings.

“Impound” means to abate a radiological hazard. Actions which may be taken by the Department in impounding a source of radiation include seizing the source of radiation, controlling access to an area, and preventing a radiation machine from being utilized.

“Indian Tribe” means an Indian or Alaska native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

“Individual” means any human being.

“Individual monitoring” means the assessment of:

Dose equivalent

By the use of individual monitoring devices, or

By the use of survey data, or

Committed effective dose equivalent

By bioassay; or

By determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition of DAC-hours in Article 4).

“Individual monitoring device” means a device designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this Chapter, “dosimeter” and “personnel dosimeter,” are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, optical stimulation devices, and personal (“lapel”) air sampling devices.

“Individual monitoring equipment” means one or more individual monitoring devices. For purposes of this Chapter, “personnel monitoring equipment” is an equivalent term.

“Industrial radiography” means the examination of the macroscopic structure of materials by non-destructive methods utilizing sources of ionizing radiation.

“Injection tool” means a device used for controlled subsurface injection of radioactive tracer material.

“Inspection” means an examination or observation by a representative of the Department, including but not limited to tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the License or certificate of registration.

“Interlock” means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

“Internal dose” means that portion of the dose equivalent received from radioactive material taken into the body.

“Irradiate” means to expose to radiation.

“Laser” (light amplification by the stimulated emission of radiation) means any device which can produce or amplify electromagnetic radiation with wavelengths in the range of 180 nanometers to 1 millimeter primarily by the process of controlled stimulated emission.

“Lens dose equivalent” (LDE) means the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm²).

“License” means the grant of authority, issued pursuant to Articles 3 and 14 of this Chapter and A.R.S. §§ 30-671, 30-672, and 30-721 et seq., to acquire, possess, transfer, and use sources of

radiation. The types of licenses issued by the Department are described in R9-7-1302.

“Licensed material” means radioactive material received, possessed, used, transferred, or disposed of under a general or specific license issued by the Department.

“Licensed practitioner” means a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, chiropractic, podiatry, or naturopathy in this state.

“Licensee” means any person who is licensed by the Department under this Chapter to acquire, possess, transfer, or use sources of radiation.

“Licensing State” means any state having regulations equivalent to this Chapter relating to, and an effective program for the regulation of, naturally occurring and accelerator-produced radioactive material (NARM).

“Limits” (See “Dose limits”)

“Local components” means those parts of an analytical x-ray system that are struck by x-rays, including radiation source housings, port and shutter assemblies, collimator, sample holders, cameras, goniometer, detectors and shielding but not including power supplies, transformers, amplifiers, readout devices, and control panels.

“Logging supervisor” means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

“Logging tool” means a device used subsurface to perform well logging.

“Lost or missing licensed or registered source of radiation” means licensed or registered source of radiation the location of which is unknown. Included are licensed radioactive material or a registered radiation source that has been shipped but has not reached its planned destination and whose location cannot be readily traced or ascertained in the transportation system.

“Low-level waste” means waste material which contains radioactive nuclides in concentrations or quantities which exceed applicable standards for unrestricted release but does not include:

- High-level waste, such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;
- Waste material containing transuranic elements with contamination levels greater than 10 nanocuries per gram (370 kilobecquerels per kilogram) of waste material; or
- The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

“Low Specific Activity (LSA) material” means radioactive material with limited specific activity which is nonfissile or is excepted under 10 CFR 71.15, and which satisfies the descriptions and limits set forth in the following section. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents.

The LSA material must be in one of three groups:

LSA—I.

Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for the use of these radionuclides;

Natural uranium, depleted uranium, natural thorium or their compounds or mixtures, provided they are unirradiated and in solid or liquid form;

Radioactive material other than fissile material, for which the A2 value is unlimited; or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with appendix A.

LSA—II.

Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 10^{-4} A2/g for solids and gases, and 10^{-5} A2/g for liquids.

LSA—III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 CFR 71.77, in which:

The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days will not exceed 0.1 A2; and

The estimated average specific activity of the solid, excluding any shielding material, does not exceed 2×10^{-3} A2/g.

“Major processor” means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material or exceeding four times Type B quantities as sealed sources but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

“Medical dose” means a radiation dose intentionally delivered to an individual for medical

examination, diagnosis, or treatment.

“Member of the public” means any individual except when that individual is receiving an occupational dose.

“MeV” means Mega Electron Volt which equals 1 million volts (10⁶ eV).

“Mineral logging” means any well logging performed in a borehole drilled for the purpose of exploration for minerals other than oil or gas.

“Minor” means an individual less than 18 years of age.

“Monitoring” means the measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, “radiation monitoring” and “radiation protection monitoring” are equivalent terms.

“Multiplier” means a letter representing a number. The use of a multiplier is based on the code given below:

<i>Prefix</i>	<i>Multiplier Symbol</i>	<i>Value</i>
eka	E	10 ¹⁸
peta	P	10 ¹⁵
tera	T	10 ¹²
giga	G	10 ⁹
mega	M	10 ⁶
kilo	k	10 ³
milli	m	10 ⁻³
micro	u	10 ⁻⁶
nano	n	10 ⁻⁹
pico	p	10 ⁻¹²
femto	f	10 ⁻¹⁵
atto	a	10 ⁻¹⁸

“NARM” means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material. This term should not be confused with “NORM” which is defined as naturally occurring radioactive material.

“Natural radioactivity” means the radioactivity of naturally occurring radioactive substances.

“Normal operating procedures” means the entire set of instructions necessary to accomplish the intended use of the source of radiation. These procedures shall include, but are not limited to, sample insertion and manipulation, equipment alignment, routine maintenance by the licensee, and data recording procedures which are related to radiation safety.

“NRC” means Nuclear Regulatory Commission, the U.S. Nuclear Regulatory Commission, or its duly authorized representatives.

“NRC Document Control Desk” means the Nuclear Regulatory Document Control Desk. ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

“Nuclear waste” means any highway route controlled quantity (defined in 49 CFR 173.403, revised January 8, 2015, incorporated by reference, available under R9-7-101, and containing no future editions or amendments) of source, byproduct, or special nuclear material required to be in NRC-approved packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site. Additional requirements associated with transportation of radioactive material can be found in Article 15.

“Occupational dose” means the dose received by an individual in the course of employment in which the individual’s assigned duties involve exposure to sources of radiation, whether in the possession of a licensee, registrant, or other person. Occupational dose does not include a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, voluntary participation in a medical research program, or as a member of the public.

“Open beam system” means an analytical x-ray system in which an individual could place some body part in the primary beam path during normal operation.

“Ophthalmic physicist” means an individual who:

Meets the requirements in 10 CFR 35.433(a)(2) and 10 CFR 35.59; and

Is identified as an ophthalmic physicist on a:

Specific medical use license issued by the Department, the NRC, or another Agreement State;

Permit issued by a Department, NRC, or another Agreement State broad scope medical use licensee;

Medical use permit issued by a NRC master material licensee; or

Permit issued by a NRC master material licensee broad scope medical use permittee.

“Package” means the packaging together with its radioactive contents as presented for transport.

“Particle accelerator” (See “Accelerator”)

“Permanent radiographic installation” means a fixed, shielded installation or structure designed or intended for industrial radiography and in which industrial radiography is regularly performed.

“Personnel dosimeter” (See “Individual monitoring device”)

“Personnel monitoring equipment” (See “Individual monitoring device”)

“Personal supervision” means supervision in which the supervising individual is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the supervised individual and in such proximity that immediate assistance can be given if required.

“PET” (See Positron Emission Tomography (PET))

“Pharmacist” means an individual licensed by this state to compound and dispense drugs, prescriptions, and poisons.

“Physician” means an individual licensed pursuant to A.R.S. Title 32, Chapters 13 or 17.

“Positron Emission Tomography (PET)” means an imaging technique using radionuclides to produce high resolution images of the body’s biological functions.

“Positron Emission Tomography radionuclide production facility” means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

“Preceptor” means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, a Radiation Safety Officer, or an Associate Radiation Safety Officer.

“Primary beam” means radiation which passes through an aperture of the source housing by a direct path from the x-ray tube or a radioactive source located in the radiation source housing.

“Public dose” means the dose received by a member of the public from radiation from radioactive material released by a licensee or registrant, or exposure to a source of radiation used in a licensed or registered operation. It does not include an occupational dose or a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, or voluntary participation in a medical research program.

“Pyrophoric liquid” means any liquid that ignites spontaneously in dry or moist air at or below 130° F (54.4° C).

“Pyrophoric solid” means any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or

processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently that it creates a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

“Qualified expert” means an individual certified in the appropriate field by the American Board of Radiology or the American Board of Health Physics, or having equivalent qualifications that provide the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs; or an individual certified in Therapeutic Radiological Physics or X-ray and Radium Physics by the American Board of Radiology, or having equivalent qualifications that provide training and experience in the clinical applications of radiation physics to radiation therapy, to calibrate radiation therapy equipment. The detailed requirements for a particular qualified expert may be provided in the respective Articles of this Chapter. For clarification purposes, a qualified expert is not always an authorized medical physicist; however, an authorized medical physicist is included within the definition of “qualified expert.”

“Quality Factor” (Q) means the modifying factor, listed in Tables I and II of this Article, that is used to derive dose equivalent from absorbed dose.

“Quarter” (See “Calendar quarter”)

“Rad” means the special unit of absorbed dose. One rad equals 100 ergs per gram, or 0.01 gray.

“Radiation” means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules, this term is synonymous with ionizing radiation. Equivalent terminology for non-ionizing radiation is defined in Article 14.

“Radiation area” means any area accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

“Radiation dose” (See “Dose”)

“Radiation machine” means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

“Radiation Safety Officer” (RSO) means the individual who:

For license conditions:

- Meets the requirements in 10 CFR 35.50(a) or (c)(1), revised July 16, 2018, and 10 CFR 35.59, revised March 27, 2006, incorporated by reference, available under R9-7-10, and containing no future editions or amendments; or
- Is identified as a Radiation Safety Officer on a specific medical use license

issued by the Department, the NRC or another Agreement State; or a medical use permit issued by a NRC master material licensee; or

For registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter, and any registration conditions.

“Radiation Safety Officer” (RSO) means the individual who:

For license conditions:

Meets the requirements of R9-7-407, and for a medical license meets the training requirements of R9-7-710; or

Is identified as a Radiation Safety Officer on a specific medical use license issued by the Department, the NRC, or another Agreement State; or a medical use permit issued by a NRC master material licensee; or

Meets the requirements in R9-7-512 on a specific industrial license issued by the Department, the NRC, or another Agreement State; or an industrial use permit issued by a NRC master material licensee; or

For registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter and any registration conditions.

“Radioactive marker” means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

“Radioactive material” means any solid, liquid, or gas which emits radiation spontaneously.

“Radioactivity” means emission of electromagnetic energy or particles or both during the transformation of unstable atomic nuclei.

“Radiographer” means any individual who performs or personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of this Chapter and all conditions of the license or certificate of registration.

“Radiographer’s assistant” means any individual who, under the personal supervision of a radiographer, uses sources of radiation, radiographic exposure devices, related handling tools, or survey instruments in industrial radiography.

“Registrant” means any person who is registered with the Department and is legally obligated to register with the Department pursuant to these rules and the Act.

“Registration” is the process by which a person becomes a registrant pursuant to Article 2 or 14 of this Chapter. With the exception of registration of persons who install or service radiation machines, the types of registrations issued by the Department are described in R9-7-1302.

“Regulations of the U.S. Department of Transportation” means the federal regulations in 49 CFR 107, revised April 19, 2017; 49 CFR 171, revised April 19, 2017; 49 CFR 172, revised November 23, 2015; 49 CFR 173, revised March 6, 2019; 49 CFR 174, revised February 28, 2019; 49 CFR 175, revised October 18, 2018; 49 CFR 176, November 7, 2018; 49 CFR 177, revised September 25, 2013; 49 CFR 178, revised November 7, 2018; 49 CFR 179, revised September 25, 2018; and 49 CFR 180, revised March 30, 2017, incorporated by reference, available under R9-7-101, and containing no future editions or amendments.

“Rem” means the special unit of dose equivalent (see “Dose equivalent”). The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem - 0.01 sievert).

“Research and Development” means exploration, experimentation, or the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and Development does not include the internal or external administration of radiation or radioactive material to human beings.

“Restricted area” means any area where the licensee or registrant controls access for purposes of protecting individuals from exposure to radiation and radioactive material. A restricted area does not include any areas used for residential quarters, although a room or separate rooms in a residential building may be set apart as a restricted area.

“Roentgen” (R) means the special unit of exposure and is equal to the quantity of x or gamma radiation which causes ionization in air equal to 258 microcoulomb per kilogram (see “Exposure”).

“Safety system” means any device, program, or administrative control designed to ensure radiation safety.

“Sealed source” means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

“Sealed Source and Device Registry” means the national registry that contains all the registration certificates, generated by both the NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for each source or device.

“Shallow dose equivalent” (HS), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²).

“Shielded position” means the location within a radiographic exposure device or storage container which, by manufacturer’s design, is the proper location for storage of the sealed source.

“Sievert” means the SI unit of dose equivalent (see “Dose equivalent”). The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

“Site boundary” means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

“Source changer” means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

“Source holder” means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

“Source material” means:

Uranium or thorium, or any combination of uranium or thorium, in any physical or chemical form; or

Ores that contain by weight 1/20 of 1 percent (0.05 percent) or more of uranium, thorium, or any combination of uranium and thorium.

Source material does not include special nuclear material.

“Source material milling” means any activity that results in the production of byproduct material as defined by the second subsection under the definition of “Byproduct material.”

“Source of radiation” or “source” means any radioactive material or any device or equipment emitting, or capable of producing, radiation.

“Special form radioactive material” means radioactive material that satisfies all of the following conditions:

It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

The piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

It satisfies the test requirements specified in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996 (see 10 CFR part 71, revised as of January 1, 1996), and

constructed before April 1, 1998; and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of 10 CFR 71.75(d) in effect before September 10, 2015 may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

“Special nuclear material in quantities not sufficient to form a critical mass” means Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; Uranium-233 in quantities not exceeding 200 grams; Plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

“Storage area” means any location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, storage container, sealed source, or other source of radiation when it is not in use.

“Storage container” means a device in which sealed sources are transported or stored.

“Subsurface tracer study” means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

“Survey” means an evaluation of the production, use, release, disposal, or presence of sources of radiation or any combination thereof under a specific set of conditions to determine actual or potential radiation hazards. Such evaluations include, but are not limited to, tests, physical examination and measurements of levels of radiation or concentration of radioactive material present.

“TEDE” (See “Total Effective Dose Equivalent”)

“Teletherapy” means therapeutic irradiation in which the source of radiation is at a distance from the body.

“Temporary job site” means any location where sources of radiation are used other than the specified locations listed on a license document. Storage of sources of radiation at a temporary jobsite shall not exceed six months unless the Department has granted an amendment authorizing storage at that jobsite.

“Test” means the process of verifying compliance with an applicable rule, order, or license condition.

“These rules” means all Articles of 9 A.A.C. 7.

“Total Effective Dose Equivalent” (TEDE) means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

“Total Organ Dose Equivalent” (TODE) means the sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose. Determination of TODE is described in R9-7-411.

“Tribal official” means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

“Unrefined and unprocessed ore” means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

“Unrestricted area” means any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive material. Any area used for residential quarters is an unrestricted area.

“Uranium - natural, depleted, enriched.”

Natural uranium means uranium (which may be chemically separated) with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

Depleted uranium means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

Enriched uranium means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

“U.S. Department of Energy” means the Department of Energy established by P.L. 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department of Energy exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers, and components; and transferred to the U.S. Energy Research and Development Administration and to the administrator of that agency under sections 104(b), (c), and (d) of the Energy Reorganization Act of 1974 (P.L. 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of Energy under Section 301(a) of the Department of Energy Organization Act (P.L. 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

“Very high radiation area” means an area, accessible to individuals, in which radiation levels

from radiation sources external to the body could result in an individual receiving an absorbed dose that exceeds 5 grays (500 rads) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

“Waste” (See “Low-level waste”)

“Waste handling licensees” means persons licensed to receive and store radioactive wastes prior to disposal and persons licensed to dispose of radioactive waste.

“Week” means seven consecutive days starting on Sunday.

“Well-bore” means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

“Well-logging” means the lowering and raising of measuring devices or tools which may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well and adjacent formations.

“Whole body” means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

“Wireline” means an armored cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.

“Wireline service operation” means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

“Worker” means any individual engaged in work under a license or registration issued by the Department and controlled by employment or contract with a licensee or registrant.

“WL” means working level, any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of $1.3E + 5$ MeV of potential alpha particle energy. The short-lived radon daughters are – for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

“WLM” means working level month, an exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

“Workload” means the degree of use of an x-ray or gamma-ray source per unit time.

“Year” means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

R9-7-103. Exemptions

- A.** Common and contract carriers, freight forwarders, and warehousemen who are subject to 49 CFR 107.109, 107.111, 107.113, 171.2, 171.3, 172.200, 173.1, 173.3, 173.4, 173.401, 175.3, 175.10, 176.3, 176.5, 176.11, 176.24, 176.27, and 177.801, revised October 1, 2007, of the U.S. Department of Transportation, or 39 CFR 111.1 of the U.S. Postal Service, revised July 1, 2007, incorporated by reference, and available under R9-7-101, and who if need be, store radioactive material, for periods of less than 72 hours, in the regular course of their carriage for another, are exempt from this Chapter. The incorporated materials above contain no future editions or amendments.
- B.** Any U.S. Department of Energy contractor or subcontractor and any U.S. Nuclear Regulatory Commission contractor or subcontractor of the following categories operating within this state are exempt from this Chapter to the extent that such contractor or subcontractor under the contract receives, possesses, uses, transfers, or acquires sources of radiation:
1. Prime contractors performing work for the Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;
 2. Prime contractors of the Department of Energy performing research or development, manufacture, storage, testing or transportation of nuclear weapons or components thereof;
 3. Prime contractors of the Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and
 4. Any other prime contractor or subcontractor of the Department of Energy or of the Nuclear Regulatory Commission when the state and the Nuclear Regulatory Commission jointly determine:
 - a. That the exemption of the prime contractor or subcontractor is authorized by law; and
 - b. That under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.
- C.** Any licensee who delivers to a carrier for transport any package which contains radioactive material having a specific activity of 74 kBq/kg (2 nanocuries per gram) or less, is exempt from the provisions of this Chapter with respect to that package.
- D.** Any physician licensed by a State to dispense drugs in the practice of medicine is exempt from 10 CFR 71.5 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption must be licensed under 10

CFR part 35 and/or R9-7-703.

R9-7-104. Prohibited Uses

- A. A person shall not use the following fluoroscopic devices:
 - 1. Hand-held fluoroscopic screens,
 - 2. Shoe-fitting fluoroscopic devices.
- B. Except as specifically authorized by law, a person shall not use sources of ionizing radiation for the purpose of screening an individual or inspecting an individual for:
 - 1. Concealed weapons,
 - 2. Hazardous materials,
 - 3. Stolen property, or
 - 4. Contraband.
- C. Unless there is a medical or dental indication for the exposure and the exposure is prescribed by a licensed practitioner, a person shall not deliberately expose an individual to the useful beam from:
 - 1. An ionizing radiation machine; or
 - 2. A non-ionizing radiation source, having a radiation beam known to be harmful to human tissue.

R9-7-105. Quality Factors for Converting Absorbed Dose to Dose Equivalent

- A. As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table I.

TABLE I
. QUALITY FACTORS AND ABSORBED DOSE
EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent ^a
X, gamma, or beta radiation and high-speed electrons		1

Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	0.05
Neutrons of unknown energy	0.1
High-energy protons	0.1

^a The absorbed dose in gray is equal to 1 Sv or the absorbed dose in rad is equal to 1 rem.

- B.** If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table II to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE II. MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

	Neutron Energy (meV)	Quality Factor (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
(thermal)	2.5E-8	2	980E+6	980E+8
	1E-7	2	980E+6	980E+8
	1E-6	2	810E+6	810E+8
	1E-5	2	810E+6	810E+8
	1E-4	2	840E+6	840E+8

1E-3	2	980E+6	980E+8
1E-2	2.5	1010E+6	1010E+8
1E-1	7.5	170E+6	170E+8
5E-1	11	39E+6	39E+8
1	11	27E+6	27E+8
2.5	9	29E+6	29E+8
5	8	23E+6	23E+8
7	7	24E+6	24E+8
10	6.5	24E+6	24E+8
14	7.5	17E+6	17E+8
20	8	16E+6	16E+8
40	7	14E+6	14E+8
60	5.5	16E+6	16E+8
1E+2	4	20E+6	20E+8
2E+2	3.5	19E+6	19E+8
3E+2	3.5	16E+6	16E+8
4E+2	3.5	14E+6	14E+8

^a Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom.

^b Monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

R9-7-106. Units of Activity

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq) or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time. The definitions for these units are located in R9-7-102.

R9-7-107. Misconduct

- A. A licensee, registrant, applicant for a license or certificate of registration, or employee of a licensee, registrant, or applicant; or any contractor (including a supplier or consultant),

subcontractor, or employee of a contractor or subcontractor of any licensee or certificate of registration holder who provides to any licensee, registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's, or applicant's activities in this Chapter, shall not:

1. Knowingly engage in conduct that violates or will result in a violation by a licensee, registrant, or applicant, of any statute, rule, regulation, or order; or any term, condition, or limitation of any license or registration issued by the Department; or
 2. Knowingly submit to the Department, or a licensee, registrant, or applicant, or a licensee's, registrant's, or applicant's contractor or subcontractor, information that is incomplete or inaccurate.
- B.** The Board shall impose the applicable civil penalty listed in R9-7-1216 on a person who violates subsection (A)(1) or (A)(2). For this purpose the person is classified as a Division II licensee and the violation is classified as a Severity II violation.
- C.** For the purposes of this Section, "misconduct" means conduct prohibited under subsection (A).
- D.** A person who is not a licensee, registrant, or applicant and knowingly violates a rule for the safe use of radiation sources in 9 A.A.C. 7 is subject to the enforcement actions in 9 A.A.C. 7, Article 12.

Statutory Authority for Rules in A.A.C. 7, Article 1

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.
3. Conduct an information program, including:
 - (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
 - (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
 - (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
 - (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.
12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.
13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.
14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, the first \$300,000 in fees collected each fiscal year pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.

30-657. Records

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.
2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-672.01. Registration of persons who install or service radiation machines; exception; roster of registrants

A. A person who is in the business of installing or servicing radiation machines that are required to be registered by the department shall register with the department on a form provided by the department.

B. Notwithstanding subsection A of this section, a person who is subject to the jurisdiction of the department and who operates a radiation machine is not required to register with the department.

C. The registration form required pursuant to subsection A of this section shall be limited to the following information:

1. The full business name of the registrant.
2. The names of the owners if the registrant is a corporation or partnership.
3. The names of employees who carry out installation or service work for the registrant.
4. The business address of the registrant.

D. The department shall maintain a roster of all registrants, including the date of initial registration. The roster shall be available for public inspection.

E. A registrant must reregister with the department if there is a change in the information provided under subsection C of this section.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

30-686. Appeal; hearing

A person who is denied licensure or registration under article 2 of this chapter or who is denied an exception from licensure or registration under article 2 of this chapter may appeal the denial by making a written request for a hearing pursuant to title 41, chapter 6, article 10. The department shall give notice of such an action pursuant to title 41, chapter 6, article 10, and the notice shall state the person's right to make a written request for a hearing.

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. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- F. The compensation of all personnel shall be as determined pursuant to section 38-611.
- G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
- H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- I. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
 2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
 3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
 4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
 - (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
 - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
 - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
 - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
 - (g) 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.

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

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

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

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

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

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for

inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare 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. 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.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7, Article 15, Transportation



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 10, 2021

SUBJECT: Department of Health Services
Title 9, Chapter 7, Article 15

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 7, Article 15, regarding radiation control.

In the last 5YRR of these rules, the Department indicated it would revise the rules to address compatibility issues with federal requirements of the NRC. The Department addressed the changes in two separate rulemakings, one in July 2018 and another in May 2020.

Proposed Action

The Department indicates several of the rules need to be amended to improve overall clarity, conciseness and understandability. Several of the rules in this article must comply with the requirements of the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967. Therefore, any proposed changes need to be approved by the U.S. Nuclear Regulatory Commission (NRC). The Department, as indicated in past 5YRRs of this Chapter, proposes to amend the entire Chapter at once after completing reviews of all Articles in the Chapter. The last 5YRR for the Chapter is due in December 2021.

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 review indicates that pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 15 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7. The Department indicates that no economic impact statements were available to the Department for the period prior to the recodification. The rule makings since the recodification were made through expedited rulemaking and no economic impact statements were required. The Department states that changes made to the rules were made to keep them consistent with federal requirements. They believe that since a licensee would need to follow these requirements regardless of their being in the rules, the changes were believed to be administrative in nature, and impose minimal costs on stakeholders.

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 benefit of the rules outweighs the costs of the rules. They state that although the issues described in this report may impose a slight regulatory burden, many of them cannot be changed because they are required to be the same as federal regulations. Therefore, the Department believes that the rules, with this constraint, impose the least burden and cost to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates 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 clear, concise, and understandable with the exception of the following:

R9-7-1501- Requirement for License

R9-7-1502 - Definitions

R9-7-1504 - Intrastate Transportation and Storage Radioactive Materials

R9-7-1505 - Storage of Radioactive Materials in Transport

R9-7-1506 - Preparation of Radioactive Material for Transport
R9-7-1507 - Packaging Quality Assurance
R9-7-1508 - Advance Notification of Nuclear Waste Transportation
R9-7-1509 - General License: Plutonium-Beryllium Special Form Material
R9-7-1510 - Packaging
R9-7-1511 - Air Transport of Plutonium
R9-7-1512 - Advance Notification of Shipment of Irradiated Reactor Fuel and
Nuclear Waste
R9-7-1513 - Opening Instructions
R9-7-1514 - Records
R9-7-1515 - Exemption for Low-Level Radioactive Materials

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

Yes, the Department indicates 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 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 the corresponding federal laws; 10 CFR 20.1906(e); 10 CFR 71, Subparts A, G, and H; 10 CFR 71, Appendix A, Table A-2; 10 CFR 71.14(a); 10 CFR 71.5; 10 CFR 71.97; 10 CFR 73.24; 39 CFR 111.1; 49 CFR 107; and 49 CFR 171 through 180.

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?**

These rules were recodified into 9 A.A.C. 7, Article 15, without any substantive changes, from 12 A.C.C. 1, Article 15, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation in compliance with Laws 2017, Ch. 313, and Laws 2018, Ch. 234. All but six of the rules in Article 15 were adopted after July 29, 2010. However, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

Upon review, council staff agrees the Department complies with A.R.S. § 41-1037. Due to the majority of the rules being adopted before July 29, 2010, compliance with A.R.S. § 41-1037 is unnecessary. As the department states, A.R.S. § 30-672 says that “[t]he department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials.” Pursuant to A.R.S. § 41-1037(A)(2), an agency may use a license other than a general permit if “[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.” The issuance of an alternative type of permit, license or authorization here appears to be specifically authorized by A.R.S. § 30-672. Therefore, the Department is in compliance with the requirements of A.R.S. § 41-1037.

11. Conclusion

As mentioned above, the Department indicates several of the rules need to be amended to improve overall clarity, conciseness and understandability. Any proposed changes need to be approved by the U.S. Nuclear Regulatory Commission (NRC). The Department, as indicated in past 5YRRs of this Chapter, proposes to amend the entire Chapter at once after completing reviews of all Articles in the Chapter. The last 5YRR for the Chapter is due in December 2021.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 8, 2021

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. 7, Article 15, 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. 7, Article 15, Transportation, which is due on April 30, 2021.

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,

A handwritten signature in black ink, appearing to read 'RL', written over a light gray circular stamp.

Robert Lane
Director's Designee

RL:rms

Enclosures



Arizona Department of Health Services
Five-Year-Review Report
Title 9. Health Services
Chapter 7. Department of Health Services
Radiation Control
Article 15. Transportation
April 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-671, 30-672, 30-672.01, 30-673, 30-686

2. The objective of each rule:

Rule	Objective
R9-7-1501	To specify requirements for licensing in order to transport radioactive material to a transportation carrier.
R9-7-1502	To specify that the definitions in Article 1 of the Chapter are applicable to the rules in the Article.
R9-7-1503	To specify that a licensee is required to comply with U.S. Department of Transportation regulations, incorporated by reference, when transporting licensed materials.
R9-7-1504	To establish the parameters under which a general license is issued to a common or contract carrier, not exempt under R9-7-103, or a private carrier or licensee for the intrastate transportation and storage of radioactive materials. To specify requirements for notification of the Department. To exempt those with a general license issued under this rule from requirements in Article 4 or Article 10 of this Chapter.
R9-7-1505	To specify requirements for the storage of radioactive materials, including requirements for extended storage, to protect the health and safety of the public.
R9-7-1506	To specify requirements for preparing a package of radioactive materials for transport, including packaging requirements and ensuring the package may be safely opened.
R9-7-1507	To specify requirements, including an incorporation by reference of federal regulations and exceptions from these regulations, for quality assurance related to packaging of radioactive materials for transport.
R9-7-1508	To require that the Department be notified in advance of the transportation of nuclear waste to protect health and safety.
R9-7-1509	To specify requirements for a general license to transport fissile material in the form of plutonium-beryllium special form sealed sources.
R9-7-1510	To specify requirements for a general licensee related to packaging requirements.
R9-7-1511	To establish conditions under which plutonium may be transported by air.

R9-7-1512	To specify advance notification requirements for shipment of licensed material to protect health and safety.
R9-7-1513	To establish requirements related to the opening of a package containing radioactive materials to protect health and safety.
R9-7-1514	To establish requirements related to records of the shipment of licensed material.
R9-7-1515	To specify the types of materials that are exempt from the requirements of the Article.

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
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules.

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 No X

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
Multiple	The rules would be clearer if minor grammatical or formatting changes were made. To comply with the Agreement negotiated between Arizona and the U.S. Atomic Energy Commission in 1967, most of the requirements in this Article must be consistent with requirements of the U.S. Nuclear Regulatory Commission (NRC). Therefore, although some

	wording could be clearer or more concise, the Department cannot make these changes without approval by the NRC.
R9-7-1501	Since there is no other mention of “specific license” in the Article, the rule would be clearer if the rule included a cross-reference to the rules in Article 3 under which a specific license could be issued.
R9-7-1502	The rule would be clearer if “Article 1” were replaced with “R9-7-102,” which is the Section in Article 1 of the Chapter containing definitions.
R9-7-1504	The rule could be clearer if there were definitions of “common carrier,” “contract carrier,” and “private carrier,” in addition to the defined term “carrier, which also includes these terms as part of the definition. The rule would also be improved if subsection (B) clarified that the incidents for which the Department needs to be notified are those that occur in Arizona. The rule would be more understandable if subsection (C) specified which requirements in Articles 4 and 10 apply in this Article.
R9-7-1505	Subsection (A) would be clearer if a citation were included to describe what “Yellow II” and “Yellow III” mean. Subsection (C) would be clearer if the applicable Sections in Article 4 were specified. Subsection (D) would be clearer if the term “extended period” were better explained or described and the subsection reformatted to remove passive language. The rule would be clearer and more concise if the requirements in subsection (D) were combined with the requirements in subsection (C).
R9-7-1506	The requirements in subsection (3)(b) are very similar to those in R9-7-1513, but they cannot be combined because the wording in R9-7-1513 is required to mirror 10 CFR 71.89.
R9-7-1507	This rule would be improved by clarifying whether the rule applies to all licensees that transport radioactive materials or only those using a package for which a license, certificate of compliance, applicant for a certificate of compliance, or other approval has been issued by the NRC, as well as clarifying which licensees need to have a quality assurance program under this rule and what “Type B packaging” and “Type B package” mean. However, it must stay as written because of transboundary implications. Subsection (A) would be more concise if it used the term “NRC,” as defined in R9-7-102, rather than Nuclear Regulatory Commission.” Subsection (B) and the second sentence in subsection (E) could be revised to remove passive language.
R9-7-1508 and R9-7-1512	Both these two rules refer to “nuclear waste,” but R9-7-1508 applies to generic nuclear waste, while R9-7-1512 applies to nuclear waste generated by nuclear power plants. The rules could be more understandable if their titles better distinguished the “nuclear waste” to which the requirements in the two rules apply.
R9-7-1508	Since “nuclear waste” is defined in R9-7-102 and R9-7-1502 states that these definitions apply to the rules in the Article, the reference to Article 1 in subsection (A) is unnecessary. The rule would be more concise if the requirements in subsections (A), (B), and (C) were incorporated into a single subsection. Subsection (D) could be revised to include electronic notifications and reworded to be clearer and more concise. The date in subsection (E) is past and should be removed.
R9-7-1509	The rule uses the term “special form,” but the defined term is “special form radioactive material,” so one or the other should be changed for consistency. The rule would be clearer if there were a cross-reference to what a Type A package is and where a “Type A quantity” is specified. However, the rule must be compatible with federal regulations. The wording of subsection (D)(3) does not fit with the lead-in and should be revised. Subsection (E) would be clearer if reworded.
R9-7-1510	The title of the rule is somewhat misleading, since the content has more to do with assuring the quality of the packaging, rather than the packaging itself. Subsections (A)(2)(d) and (e) do not fit with the lead-in and should be made into separate subsections. The rules would be improved if “part” in subsections (A)(2)(d) and (F) were replaced with “Article” and a citation were given to where a “Type B or fissile material package” in subsection (A)(4) were

	<p>described. The rule would be more understandable if subsection (B)(1) specified who is required to refer to the federal regulation. Subsection (B) would be clearer if there were a cross-reference to where a “Type B package” is specified, as well as specifying what Type B(U), Type B(M), LSA material, and fissile material packages are. The rule would be more concise if either “low specific activity” or “LSA” were used in subsection (B)(2), rather than both. The rule would also be clearer if it specified what “satisfactorily completed” means in the phrase “Fabrication of the packaging is satisfactorily completed by April 1, 1999” in subsection (B)(2)(a). Subsection (B)(2)(c) does not make sense and should be reworded. The rule would also be more understandable if it specified what “not significant” in subsections (B)(3)(a) and (b) means and identified which “requirements of this Section” must be satisfied. The rule would be more understandable if subsection (B)(5) were at the beginning of the rule, rather than buried in the middle. In subsection (C), the rule would be improved if the meaning of “specification” were clearer. The rules would be improved if subsections (C)(1) through (6) were reworded to match the lead-in, “low concentrations” in subsection (F)(3) were referenced or quantified, and “a DOT Type A package” in subsection (F)(5) were described or a reference provided.</p>
R9-7-1511	<p>The rule would be more concise if the requirements in subsections (A)(4) and (C) were combined into one subsection. However, the wording is required to mirror 10 CFR 71.88.</p>
R9-7-1512	<p>The rule would be more understandable if the difference between the applicability of this rule versus R9-7-1508 were clarified. The rule would be improved if subsection (A) were clarified as to whether the term “licensed material” applies to all radioactive material subject to licensing or only irradiated reactor fuel and nuclear waste. The date in subsection (B) is past and should be removed from the rule. Also in subsection (B), the terms “advance notification” and “before the transport” appear to be redundant, but the rule must remain as written due to compatibility requirements. The passive language of subsection (C) should be reworded, and the subsection clarified so a reader could better understand that, for transport of irradiated fuel, the requirements in subsections (A) and (B) apply and that the “licensed material” mentioned applies to nuclear waste generated by nuclear power plants. The rule would also be improved if “part” in subsection (C)(1) were replaced with “Article.” Subsections (C)(3)(a) and (b) would be clearer if the location of Appendix A, Table A-1 were referenced. In subsection (D), there appears to be an extraneous “(1)” that should be removed. The requirement in subsection (D) for notification would be more understandable if it included the Department in subsection (D)(1) for Arizona, and clarified whether the notification was required for each state through which the shipment passed, perhaps by combining subsection (D) with subsections (A) and (B) into one subsection.</p>
R9-7-1513	<p>While the requirements in R9-7-1506(3)(b) are very similar to those in the rule, the requirements in this rule are more restrictive and need to mirror federal regulations.</p>
R9-7-1514	<p>Subsections (A) and (C) would be improved by if they read “for a period of at least three years” and “retained for at least three years,” respectively. Subsection (A)(5)(b) would be clearer if it read “that the nuclear and thermal characteristics of the irradiated fissile material comply with license conditions.” The rule would also be clearer if the term “transferee” in subsection (A)(8) were defined or described. In subsections (B) and (D), the rule should refer to the “Article” rather than the “Chapter.” Subsection (C) would be more understandable if the time that records are to be kept were part of the first sentence, if the different types of records were made into separate subsections, instead of being one long sentence, and if the third sentence were included under the “inspections, test, and audit records subsection.</p>
R9-7-1515	<p>The rules would be improved if this Section, specifying those situations exempt from requirements in 10 CFR 71, were included earlier in the Article. Subsections (B), (C), and (D) would be clearer if they were reformatted to remove passive language and include a verb. Subsections (B) and (C) would be improved if “part” were replaced with “Article,” and if the text, “Appendix A, Table ...”, were better referenced.</p>

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:**

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 15 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though two of the rulemakings were in 12 A.A.C. 1. No economic impact statements (EISs) are available to the Department for these rulemakings, so the economic impact of the Sections made/revised in the rulemakings was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking, including review of the changes made. If a rule included in one of these rulemakings was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking. Since the recodification, two additional rulemakings were made through expedited rulemaking, for which no economic impact statements were required.

Six rules were last amended or made in a rulemaking effective August 1, 2009 to make the rules compatible with then current national radiation safety standards of the NRC to comply with the Agreement. Of these, four rules (R9-7-1502, R9-7-1504, R9-7-1505, and R9-7-1506) were revised, and two new rules (R9-7-1503 and R9-7-15011) were added to the Article. The changes made to the four rules that were revised were clarifications to update cross-references for federal requirements and to add a cross-reference to R9-12-1-101 (read R9-7-101) as providing information as to how the federal regulations may be accessed. The requirements added in the two new rules made the rules in the Article consistent with federal requirements. Since a licensee would need to follow these requirements regardless of their being in the rules, the changes were believed to be administrative in nature, and impose minimal costs on stakeholders. The Department believes the economic impact is as estimated and that the changes may have provided a significant benefit through their inclusion, allowing Arizona to remain an Agreement State.

In a rulemaking effective September 10, 2012, requirements were again added to make the rules compatible with federal regulations. Clarifying text was added to R9-7-1501 to better specify to whom the Article applies. New requirements were added in R9-7-1509 related to a license for transporting plutonium-beryllium special form sealed sources, and R9-7-1513 was added to clarify requirements for any special information to safely open a package. According to the Notice of Final Rulemaking, “little or no economic impact” was believed to result from any of the rules that were part of the rulemaking. The Department believes the economic impact is as estimated.

An expedited rulemaking effective July 12, 2018, made changes to R9-7-1508, R9-7-1512, and R9-7-1515. Another expedited rulemaking effective May 6, 2020, made changes to R9-7-1507 and R9-7-1510, and added R9-7-1514. Both rulemakings were undertaken to include changes made by the NRC in federal requirements that had not yet been incorporated into Arizona's rules related to the control of radioactive material. References to a specific version of an incorporated NRC regulation were also removed to reduce confusion, since regulated entities would need to comply with the current version of the NRC regulation regardless of what version was listed in the rules. These rulemakings did not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons. In both, the Department either adopted or incorporated by reference, without material change, federal statutes and regulations, or clarified language of a rule without changing its effect. As such, no costs were anticipated for regulated persons and a significant benefit was anticipated from having rules compatible with the federal regulations. The Department believes the economic impact is as anticipated.

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 the intention of revising rules in the Article to address compatibility issues with federal requirements of the NRC. The Department addressed the described compatibility issues in rulemakings effective July 2018 and May 2020.

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 in Article 15 provide notice to regulated entities of requirements related to the transportation of radioactive material to ensure public health and safety, as well as the safety of those individuals handling, transporting, or otherwise in contact with the radioactive material. By having rules that are compatible with federal regulations, Arizona can remain an Agreement State. If Arizona lost primacy for the regulation of radioactive materials in Arizona, regulated entities would still need to comply with the federal requirements, but would need to pay the much higher fees to the NRC rather than the fees under the rules in 9 A.A.C. 7. Thus, the benefit of the rules outweighs the costs of the rules. Although the issues described in this report may impose a slight regulatory burden, many of them cannot be changed because they are required to be the same as the federal regulations. Therefore, the Department believes that the rules, with this constraint, impose the least burden and costs to regulated persons 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)?

The rules rely on the following federal regulations, but are not more stringent than the regulations:

10 CFR 20.1906(e); 10 CFR 71, Subparts A, G, and H; 10 CFR 71, Appendix A, Table A-2; 10 CFR 71.14(a); 10 CFR 71.5; 10 CFR 71.97; 10 CFR 73.24; 39 CFR 111.1; 49 CFR 107; and 49 CFR 171 through 180.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

In March 2018, these rules were recodified into 9 A.A.C. 7, Article 15, without any substantive changes, from 12 A.C.C. 1, Article 15, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation in compliance with Laws 2017, Ch. 313, and Laws 2018, Ch. 234. All but six of the rules in Article 15 were adopted after July 29, 2010. However, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department is to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The minor items and possible changes described in paragraph 6 are not substantive. Since the rules in Article 15 must comply with requirements of the Agreement, possible changes must be discussed with and, in some cases, approved by the NRC before they can be proposed. As discussed with the Council on the occasion of another 5YRR, it does not make sense in most cases, and is certainly not effective or efficient, to try to revise the Articles in Chapter 7 piecemeal. The Department plans to evaluate the entire Chapter, after finishing reviews of all the Articles in the Chapter, to determine whether a rulemaking is necessary and, if so, to establish a time-frame to complete the rulemaking. According to the Department's current schedule, the last five-year report for the Chapter is due in December 2021. Based on the reviews of those Articles that have been completed, the Chapter may need to be extensively revised and reorganized.

ARTICLE 15. TRANSPORTATION

R9-7-1501. Requirement for License

- A.** A person shall not transport radioactive material or deliver radioactive material to a carrier for transport unless the person is authorized in a general or specific license issued by the Department or exempt under R9-7-103(A).
- B.** This Article applies to any licensee to transfer licensed material if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the license, or transports that material on public highways. No provision of this Article authorizes possession of licensed material.

R9-7-1502. Definitions

Terms defined in Article 1 have the same meaning when used in this Article.

R9-7-1503. Transportation of Licensed Material

Each licensee that transports licensed material outside the site of usage, as specified in a Department license, or where transport is on public highways, or that delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations listed in 10 CFR 71.5, revised January 1, 2008, incorporated by reference and available under R9-7-101. This incorporated material contains no future editions or amendments.

R9-7-1504. Intrastate Transportation and Storage of Radioactive Materials

- A.** A general license is issued to:
 - 1. Any common or contract carrier not exempt under R9-7-103 to receive, possess, transport, and store radioactive material in the regular course of carriage for others or to store radioactive material incident to the transport activities, provided the transportation or storage is in accordance with applicable requirements for the mode of transport of the U.S. Department of Transportation, 49 CFR 171 through 180, revised October 1, 2007, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
 - 2. Any private carrier or licensee who transports and stores radioactive material, provided the transportation and storage are in accordance with the requirements applicable to the mode of transport, of the U.S. Department of Transportation, 49 CFR 171 through 180, revised October 1, 2007, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- B.** Any notification of incidents required under federal regulations in subsection (A) shall also be filed with, or made to, the Department.
- C.** A person who transports or stores radioactive material according to the general license in this Section is exempt from the requirements of Article 4 and Article 10 of this Chapter to the extent that this Section applies to transportation of the radioactive material.

R9-7-1505. Storage of Radioactive Material in Transport

- A.** A carrier shall not store, for any period in excess of 72 hours, any package that contains radioactive material bearing a Department of Transportation Yellow II or Yellow III label, unless the radioactive material is stored in an area other than, and not adjacent to, any food storage area or area that is normally

occupied by an individual.

- B. A carrier shall not store a package that contains radioactive material with other hazardous materials, except as authorized by U.S. Department of Transportation regulations in 49 CFR 177.848, revised October 1, 2007, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- C. Whenever a package containing radioactive material is stored in excess of 48 hours, the storage area shall be conspicuously posted according to the requirements of Article 4.
- D. When transit is interrupted and storage is required for an extended period, the following requirements apply:
 - 1. When radioactive materials are stored for longer than 48 hours during transit, the carrier shall notify the local fire department and provide the following information:
 - a. Warehouse location and carrier name and telephone number;
 - b. Radionuclide(s);
 - c. Activity per package in curies or becquerels and number of packages;
 - d. Form (solid, metallic, liquid, gas);
 - e. Flammability (if flammable);
 - f. Specific location in warehouse;
 - g. Estimated date of departure;
 - h. Toxicity (if toxic).
 - 2. If the radioactive material will be, or has been in storage for longer than 90 days, the carrier shall notify the Department in writing and include the information required in subsection (D)(1).
 - 3. The licensee or carrier shall immediately notify the Department of Public Safety of an accident involving radioactive material.

R9-7-1506. Preparation of Radioactive Material for Transport

A licensee shall not deliver any package that contains radioactive material to a carrier for transport or transport radioactive material, unless the licensee:

- 1. Complies with the U.S. Department of Transportation packaging, monitoring, manifesting, marking, and labeling regulations applicable to the mode of transport, (Contained in 49 CFR 171 through 180, revised October 1, 2007, or 39 CFR 111.1, revised July 1, 2007, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.); and
- 2. Establishes procedures for safely opening and closing packages in which radioactive material is transported; and
- 3. Prior to delivery of a package to a carrier for transport, assures that:
 - a. The package is properly closed, and
 - b. Any special instructions needed to safely open the package are made available to the consignee.

R9-7-1507. Packaging Quality Assurance

- A. A licensee that transports radioactive material in the course of business or delivers radioactive material to a carrier for transport in a package for which a license, certificate of compliance, applicant for a certificate of compliance, or other approval has been issued by the Nuclear Regulatory Commission, or meets the

applicable criteria (10 CFR 71, Subpart H), shall establish, maintain, and execute the quality assurance program specified in 10 CFR 71, Subpart H.

- B.** The transportation of radioactive material shall be in accordance with the requirements in 10 CFR Part 71, with the exception of the following sections: 71.2, 71.6, 71.11, 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.52, 71.53, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.70, 71.71, 71.73, 71.74, 71.75, 71.77, 71.85(a)-(c), 71.91(b), 71.99, 71.100, 71.101(c)(2), 71.101(g), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123 and 71.125. The provisions of this subsection apply to the transportation of radioactive material, or delivery of radioactive material to a carrier for transportation, regardless of whether or not the carrier is also subject to the rules and regulations of the NRC contained in 10 CFR Part 71 and other agencies of the United States having jurisdiction.
- C.** In addition to the requirements in subsection (A) for a quality assurance program, a licensee shall verify by procedures such as checking or inspection, that deficiencies or defective material or equipment relative to the shipment of packages containing radioactive material are promptly identified and corrected.
- D.** Before the first use of any Type B packaging, a licensee shall obtain approval of its quality assurance program by the Department.
- E.** A licensee shall maintain sufficient written records to demonstrate compliance with the quality assurance program. Records of quality assurance pertaining to the use of a Type B package for shipment of radioactive material shall be maintained for three years after the package is used for a shipment.

R9-7-1508. Advance Notification of Nuclear Waste Transportation

- A.** Prior to the transport of any nuclear waste, as defined in Article 1, outside of the confines of the licensee's facility or other place of use or storage, or prior to the delivery of any nuclear waste to a carrier for transport, each licensee shall provide advance notification of such transport to the Department.
- B.** Each advance notification required in subsection (A) above shall contain the following information:
 - 1. The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;
 - 2. A description of the nuclear waste contained in the shipment as required by 49 CFR 172.202 and 172.203(d) (Revised October 1, 2007, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.);
 - 3. The point of origin of the shipment and the seven-day period during which departure of the shipment will occur;
 - 4. The seven-day period during which arrival of the shipment at state boundaries will occur;
 - 5. The destination of the shipment, and the seven-day period during which arrival of the shipment will occur; and
 - 6. A point of contact with a telephone number for current shipment information.
- C.** The licensee shall make the notification required by subsection (A) in writing to the Department. A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. The licensee shall maintain a copy of the notification for one year.
- D.** The licensee shall notify the Department of any changes in shipment plans, including cancellations, rerouting, or rescheduling, provided pursuant to subsection (A). Such notification shall be by telephoning the Department. The licensee shall maintain for one year a record of the name of the individual contacted.
- E.** After June 11, 2013, each licensee shall provide advance notification to the Tribal official of participating Tribes referenced in paragraph (c)(3)(iii) of 10 CFR 71.97, or the official's designee, of the shipment of

licensed material, within or across the boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

R9-7-1509. General License: Plutonium-Beryllium Special Form Material

- A. A general license is issued to any licensee of the Department to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this Article. This material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a), revised October 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- B. The general license applies only to a licensee who has a quality assurance program approved by the Department as satisfying the provisions of R9-7-1507.
- C. The general license applies only when a package's contents:
 - 1. Contain no more than a Type A quantity of radioactive material; and
 - 2. Contain less than 1000 g of plutonium, provided that: plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 g of the total quantity of plutonium in the package.
- D. The general license applies only to packages labeled with a CSI which:
 - 1. Has been determined in accordance with subsection (E);
 - 2. Has a value less than or equal to 100; and
 - 3. For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) and less than or equal to 100 (for shipment on an exclusive use conveyance).
- E. The value for the CSI must be greater than or equal to the number calculated by the following equation:
 - 1. $CSI=10[(\text{grams of } ^{239}\text{Pu} + \text{grams of } ^{241}\text{Pu})/24]$,
 - 2. The calculated CSI must be rounded up to the first decimal place.

R9-7-1510. Packaging

- A. A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.
 - 1. This general license applies only to a licensee that has a quality assurance program approved by the Department as satisfying R9-7-1507;
 - 2. This general license applies only to a licensee that:
 - a. Has a copy of the license, certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;
 - b. Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of this Article;
 - c. Before the licensee's first use of the package, submits in writing to the Department and to ATTN: Document Control Desk, Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in 10 CFR

- 71.1(a), the licensee's name, license number, and the package identification number specified in the package approval;
- d. The licensee shall make available to the Department for inspection, upon reasonable notice, all records required by this part. Records are only valid if stamped, initialed, or signed and dated by authorized personnel, or otherwise authenticated; and
 - e. The licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by 10 CFR 71.85; design, fabrication, and assembly records; results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. These records must be retained for three years after the life of the packaging to which they apply.
- 3. This general license applies only when the package approval authorizes use of the package under this general license.
 - 4. For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of subsection (B).

B. Type B packages.

- 1. Before the first use of any packaging for the shipment of licensed material, refer to 10 CFR 71.85 (a), (b) and (c).
- 2. A Type B(U) package, a Type B(M) package, a low specific activity (LSA) material package or a fissile material package, previously approved by the NRC but without the "-85" designation in the identification number of the NRC certificate of compliance, may be used under the general license of subsection (A) with the following additional conditions:
 - a. Fabrication of the packaging is satisfactorily completed by April 1, 1999 as demonstrated by application of its model number in accordance with 10 CFR 71.85(c);
 - b. A package that is used for a shipment to a location outside the United States is subject to multilateral approval as defined in 49 CFR 173.403, revised January 8, 2015, incorporated by reference, available under R9-7-101, and containing no future editions or amendments; and
 - c. A serial number which uniquely identifies each package which conforms to the approved design and is assigned to, and legibly and durably marked on, the outside of each package.
- 3. A licensee may modify the design and authorized contents of a Type B package, or a fissile material package, previously approved by NRC, provided:
 - a. The modifications of a Type B package are not significant with respect to the design, operating characteristics, or safe performance of the containment system, when the package is subjected to the tests specified in 10 CFR 71.71 and 71.73;
 - b. The modifications of a fissile material package are not significant, with respect to the prevention of criticality, when the package is subjected to the tests specified in 10 CFR 71.71 and 71.73; and
 - c. The modifications to the package satisfy the requirements of this Section.

4. The NRC will revise the package identification number to designate previously approved package designs as B(U), B(M), AF, BF, or A as applicable, and with the identification number suffix “-85” after receipt of an application demonstrating that the design meets the requirements of this Section.
 5. For purposes of this Section, package types are defined in 10 CFR 71.4.
- C. A general license is issued to any licensee of the Department to transport fissile material, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in 49 CFR 173, revised July 16, 2018, and 49 CFR 178, revised March 11, 2013, incorporated by reference, available under R9-7-101, and containing no future editions or amendments, if the following requirements are met:
1. The licensee maintains a quality assurance program approved by the Department as satisfying R9-7-1507;
 2. The licensee:
 - a. Maintains a copy of the specification; and
 - b. Complies with the terms and conditions of the specification and the applicable requirements in 10 CFR 71, Subparts A, G, and H;
 3. The licensee does not use the specification container for a shipment to a location outside the United States, except by multilateral approval, as defined in 49 CFR 173.403, revised January 1, 2015, incorporated by reference, available under R9-7-101, and containing no future editions or amendments;
 4. The general license applies only when a package’s contents:
 - a. Contain no more than a Type A quantity of radioactive material; and
 - b. Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium-;
 5. The general license applies only to packages containing fissile material that are labeled with a CSI which:
 - a. Has been determined in accordance with subsection (E);
 - b. Has a value less than or equal to 10; and
 - c. For a shipment of multiple packages containing fissile material, the sum of the CSIs must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) and less than or equal to 100 (for shipment on an exclusive use conveyance); and
 6. The CSI value meets the following requirements:
 - a. The value for the CSI must be greater than or equal to the number calculated by the following equation: $CSI=10[(\text{grams of } 235\text{U}/X) + (\text{grams of } 235\text{U}/Y) + \text{grams of } 235\text{U}/Z]$;
 - b. The calculated CSI must be rounded up to the first decimal place;
 - c. The values of X, Y, and Z used in the CSI equation must be taken from Tables 71–1 or 71–2 as appropriate located in 10 CFR 71.22;
 - d. If Table 71–2 is used to obtain the value of X, then the values for the terms in the equation for uranium-233 and plutonium must be assumed to be zero; and
 - e. Table 71–1 values for X, Y, and Z must be used to determine the CSI if:
 - i. Uranium-233 is present in the package;
 - ii. The mass of plutonium exceeds 1 percent of the mass of uranium-235;

- iii. The uranium is of unknown uranium-235 enrichment or greater than 24 weight percent enrichment; or
- iv. Substances having a moderating effectiveness (i.e., an average hydrogen density greater than H₂O) (e.g., certain hydrocarbon oils or plastics) are present in any form, except as polyethylene used for packing or wrapping.

D. Foreign packaging.

- 1. A general license is issued to any licensee of the Department to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the Federal Department of Transportation as meeting the applicable requirements of 49 CFR 171.23, revised March 30, 2017, incorporated by reference, available under R9-7-101, and containing no future editions or amendments.
- 2. Except as otherwise provided in this Section, the general license applies only to a licensee who has a quality assurance program approved by the Department as satisfying the applicable provisions of R9-7-1507.
- 3. This general license applies only to:
 - a. Shipments made to or from locations outside the United States.
 - b. A licensee that:
 - i. Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate, relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and
 - ii. Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements in 10 CFR 71, Subparts A, G, and H, revised September 9, 2015.

E. Routine determination before each shipment of licensed material shall ensure that the package with its contents satisfies the applicable requirements of this Article and of the license. The licensee shall determine that:

- 1. The package is proper for the contents to be shipped;
- 2. The package is in unimpaired physical condition except for superficial defects such as marks or dents;
- 3. Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects;
- 4. Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;
- 5. Any pressure relief device is operable and set in accordance with written procedures;
- 6. The package has been loaded and closed in accordance with written procedures;
- 7. For fissile material, any moderator or neutron absorber, if required, is present and in proper condition;
- 8. Any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of 10 CFR 71.45;
- 9. The level of non-fixed (removable) radioactive contamination on the external surfaces of each

package offered for shipment is as low as reasonably achievable, and within the limits specified in DOT regulations in 49 CFR 173.443, revised July 11, 2014, incorporated by reference, available under R9-7-101, and containing no future editions or amendments;

10. External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in 10 CFR 71.47, at any time during transportation; and
11. Accessible package surface temperatures will not exceed the limits specified in 10 CFR 71.43(g), at any time during transportation.

F. Fissile material meeting the requirements of at least one of the conditions in subsections (F)(1) through (F)(6) are exempt from classification as fissile material and from the fissile material package standards of 10 CFR 71.55 and 71.59, but are subject to all other requirements of this part, except as noted.

1. Individual package containing 2 grams or less fissile material.
2. Individual or bulk packaging containing 15 grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but must not be included in determining the required mass for solid nonfissile material.
3. Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:
 - a. There is at least 2000 grams of solid nonfissile material for every gram of fissile material;
 - b. There is no more than 180 grams of fissile material distributed within 360 kg of contiguous nonfissile material; and
 - c. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but must not be included in determining the required mass of solid nonfissile material.
4. Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass, and that the fissile material is distributed homogeneously and does not form a lattice arrangement within the package.
5. Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by mass, with a total plutonium and uranium-233 content not exceeding 0.002 percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2. The material must be contained in at least a DOT Type A package.
6. Packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

R9-7-1511. Air Transport of Plutonium

A. Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this Section or included indirectly by citation of 49 CFR 107, and 171 through 180, previously incorporated in this Article, as may be applicable, the licensee shall ensure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

1. The plutonium is contained in a medical device designed for individual human application; or

2. The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for Plutonium specified in 10 CFR 71, Appendix A, Table A-2 (Revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.), and in which the radioactivity is essentially uniformly distributed; or
 3. The plutonium is shipped in a single package containing no more than an A2 quantity of plutonium in any isotope or form, and is shipped in accordance with R9-7-1503 and 10 CFR 71.5 (Revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.); or
 4. The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC.
- B.** Nothing in subsection (A) is to be interpreted as removing or diminishing the requirements of 10 CFR 73.24, January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- C.** For a shipment of plutonium by air that is subject to subsection (A)(4), the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, revised October 1, 2007, incorporated by reference, and available under R9-7-101. This U.S. Department of Transportation regulation is applicable to the air transport of plutonium. This incorporated material contains no future editions or amendments.

R9-7-1512. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

- A.** A licensee shall provide advance notification to the Governor, or the Director of the Department, of the shipment of licensed material as specified in 10 CFR 71.97, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- B.** After June 11, 2013, each licensee shall provide advance notification to the Tribal official of participating Tribes referenced in paragraph (c)(3)(iii) of 10 CFR 71.97, or the Tribal official's designee, of the shipment of licensed material, within or across the boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.
- C.** Advance notification is also required under this section for the shipment of licensed material, other than irradiated fuel, meeting the following three conditions:
1. The licensed material is required by this part to be in Type B packaging for transportation;
 2. The licensed material is being transported to or across a State boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and
 3. The quantity of licensed material in a single package exceeds the least of the following:
 - a. 3000 times the A1 value of the radionuclides as specified in appendix A, Table A-1 for special form radioactive material;
 - b. 3000 times the A2 value of the radionuclides as specified in appendix A, Table A-1 for normal form radioactive material; or
 - c. 1000 TBq (27,000 Ci).
- D.** Procedures for submitting advance notification. (1) The notification must be made in writing to:
1. The office of each appropriate governor or governor's designee;

2. The office of each appropriate Tribal official or Tribal official's designee; and
3. The Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

R9-7-1513. Opening Instructions

Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 10 CFR 20.1906(e) revised January 1, 2010, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

R9-7-1514. Records

- A.** Each licensee shall maintain, for a period of three years after shipment, a record of each shipment of licensed material not exempt under R9-7-1515, showing where applicable:
1. Identification of the packaging by model number and serial number;
 2. Verification that there are no significant defects in the packaging, as shipped;
 3. Volume and identification of coolant;
 4. Type and quantity of licensed material in each package, and the total quantity of each shipment;
 5. For each item of irradiated fissile material:
 - a. Identification by model number and serial number;
 - b. Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and
 - c. Any abnormal or unusual condition relevant to radiation safety;
 6. Date of the shipment;
 7. For fissile packages and for Type B packages, any special controls exercised;
 8. Name and address of the transferee;
 9. Address to which the shipment was made; and
 10. Results of the determinations required by R9-7-1510(E) and by the conditions of the package approval.
- B.** The licensee shall make available to the Department for inspection, upon reasonable notice, all records required by this Chapter. Records are only valid if stamped, initialed, or signed and dated by authorized personnel, or otherwise authenticated.
- C.** The licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by R9-7-1507; design, fabrication, and assembly records; results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. These records must be retained for three years after the life of the packaging to which they apply.
- D.** Each record required by this Chapter must be legible throughout the retention period specified by each Department regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications must include all pertinent

information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

R9-7-1515. Exemption for Low-level Radioactive Materials

- A.** A licensee is exempt from all the requirements of 10 CFR 71 with respect to shipment or carriage of the low-level materials listed in 10 CFR 71.14(a), revised January 1, 2008, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- B.** Natural material and ores containing naturally occurring radionuclides that are either in their natural state, or have only been processed for purposes other than for the extraction of the radionuclides, and which are not intended to be processed for the use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the applicable radionuclide activity concentration values specified in appendix A, Table A-2, or Table A-3 of this part.
- C.** Materials for which the activity concentration is not greater than the activity concentration values specified in appendix A, Table A-2, or Table A-3 of this part, or for which the consignment activity is not greater than the limit for an exempt consignment found in appendix A, Table A-2, or Table A-3 of 10 CFR 71 Appendix A.
- D.** Non-radioactive solid objects with radioactive substances present on any surfaces in quantities not in excess of the levels cited in the definition of contamination in 10 CFR 71.4.

Statutory Authority for Rules in A.A.C. 7, Article 15

30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.
3. Conduct an information program, including:
 - (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
 - (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
 - (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
 - (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.
12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.
13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.
14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, the first \$300,000 in fees collected each fiscal year pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the remaining monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.

30-657. Records

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.
2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-672.01. Registration of persons who install or service radiation machines; exception; roster of registrants

A. A person who is in the business of installing or servicing radiation machines that are required to be registered by the department shall register with the department on a form provided by the department.

B. Notwithstanding subsection A of this section, a person who is subject to the jurisdiction of the department and who operates a radiation machine is not required to register with the department.

C. The registration form required pursuant to subsection A of this section shall be limited to the following information:

1. The full business name of the registrant.
2. The names of the owners if the registrant is a corporation or partnership.
3. The names of employees who carry out installation or service work for the registrant.
4. The business address of the registrant.

D. The department shall maintain a roster of all registrants, including the date of initial registration. The roster shall be available for public inspection.

E. A registrant must reregister with the department if there is a change in the information provided under subsection C of this section.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

30-686. Appeal; hearing

A person who is denied licensure or registration under article 2 of this chapter or who is denied an exception from licensure or registration under article 2 of this chapter may appeal the denial by making a written request for a hearing pursuant to title 41, chapter 6, article 10. The department shall give notice of such an action pursuant to title 41, chapter 6, article 10, and the notice shall state the person's right to make a written request for a hearing.

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. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- F. The compensation of all personnel shall be as determined pursuant to section 38-611.
- G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
- H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- I. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
 2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
 3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
 4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
 - (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
 - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
 - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
 - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
 - (g) 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.

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

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

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

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

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

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for

inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare 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. 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.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 17, Department of Health Services - Medical Marijuana Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 10, 2021

SUBJECT: Department of Health Services
Title 9, Chapter 17, Articles 1 through 4

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 17, regarding the Medical Marijuana Program. The report covers the following:

Article 1 - General

Article 2 - Qualifying Patients and Designated Caregivers

Article 3 - Dispensaries and Dispensary Agents

Article 4 - Laboratories and Laboratory Agents

In the last 5YRR of these rules the Department proposed to amend several rules to address a court order and other identified issues and completed a rulemaking in December 2017. Additionally, the Department completed a rulemaking in June 2017, that addressed the use of marijuana during pregnancy to comply with Laws 2016, Ch 92. Lastly, other issues identified in the report were addressed as part of the exempt rulemakings in 2019 through 2021.

Proposed Action

_____The Department proposes to amend several of its rules to improve their overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. The

Department plans to complete an expedited rulemaking that addresses the issues identified in the report by January 2022.

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:**

Stakeholders are identified as the Department, medical marijuana patients, designated caregivers, laboratories, laboratory agents, dispensaries, dispensary agents, and the general public.

The rules affect approximately 305,000 qualifying patients, 878 designated caregivers, 130 dispensaries, 10,000 dispensary agents, 10 laboratories, and 136 laboratory agents. While the adoption of these rules and subsequent changes may impose up to substantial (\$50,000) costs on dispensaries and laboratories, the Department believes that rules provide significant benefits to qualifying patients and their families, designated caregivers, and the general public. However, the Department believes that the costs are the result of the statutory changes, rather than the rules themselves, which have been revised with stakeholder input to impose the least costs necessary to achieve the statutory requirements.

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 agrees with the Legislature that the benefits of having a safe supply of medical marijuana and marijuana products outweigh the probable costs of the rules. In following an iterative process with this rulemaking, the Department was able to gauge the burden of the rules and work with stakeholders to minimize this burden, consistent with the statutory requirements. While the Department identifies some constructive changes that could not be made under the exception granted for the rulemaking, the Department generally believes the rules in the Chapter impose the least burden and costs to regulated persons necessary to comply with the regulatory objectives of the rules.

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, with the exception of the following:

R9-17-304 - Applying for a Dispensary Registration Certificate

R9-17-305 - Applying for Approval to Operate a Dispensary

R9-17-307 - Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site

R9-17-308 - Renewing a Dispensary Registration Certificate

Table 3.1

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

Yes, the Department indicates the rules are consistent with other rules and statutes, with the exception of the following:

R9-17-304 - Applying for a Dispensary Registration Certificate

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives, with the exception of the following:

R9-17-103 - Application Submission

R9-17-107 - Time-Frames

Table 1.1

R9-17-304 - Applying for a Dispensary Registration Certificate

R9-17-305 - Applying for Approval to Operate a Dispensary

R9-17-307 - Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site

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

Yes, the Department indicates the rules are enforced as written with the exception of the following:

R9-17-101 - Definitions

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.

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.

11. Conclusion

As mentioned above, the Department plans to complete an expedited rulemaking that will address the issues identified in the report by January 2022. The proposed changes will result in the rules being more clear, concise and understandable.

Council staff recommends approval of the report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 28, 2021

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. 17, 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. 17, Medical Marijuana Program, which is due on April 30, 2021.

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,

A handwritten signature in blue ink, appearing to read 'Robert Lane', written over a blue circular stamp or seal.

Robert Lane
Director's Designee

RL:rms

Enclosures

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



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 17. Department of Health Services

Medical Marijuana Program

Article 1. General

Article 2. Qualifying Patients and Designated Caregivers

Article 3. Dispensaries and Dispensary Agents

Article 4. Laboratories and Laboratory Agents

April 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-136(G)

Specific Statutory Authority: A.R.S. § 36-2803 for all Articles; for Article 1, A.R.S. §§ 36-2801.01; for Article 2, A.R.S. §§ 36-36-2804.02 through 36-2804.05, and 36-2819; for Article 3, A.R.S. §§ 36-2803.01, 36-2804, 36-2804.01, 36-2804.03 through 36-2804.06, 36-2806, 36-2806.02, 36-2819, 36-2854, 36-2855, and 36-2858; for Article 4, A.R.S. §§ 36-2804.01, 39-2804.06, 36-2804.07, and 36-2819

2. The objective of each rule:

Rule	Objective
R9-17-101	To define terms and phrases used in the Chapter to enable the reader to clearly understand the requirements of the Chapter and allow for consistent interpretation.
R9-17-102	To specify the fees required for applying for, renewing, or amending, or changing a registry identification card, dispensary registration certificate, or laboratory registration certificate, including the reduced fee for a qualifying patient enrolled in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program who submits documentation of enrollment.
R9-17-103	To specify general requirements for submitting an application to the Department for: a. A registry identification card or to amend, change, or replace a registry identification card; b. A dispensary registration certificate; or c. A laboratory registration certificate.
R9-17-104	To specify the requirements for a request to change a cardholder's name or address on the cardholder's registry identification card.
R9-17-105	To specify the requirements for a request for replacement of a registry identification card that has been lost, stolen, or destroyed.

R9-17-106	To specify a mechanism for adding a debilitating medical condition, including the identification of requirements related to adding a debilitating medical condition, and specification of the review process.
R9-17-107	To specify the review-time-frame process for each type of approval in Table 1.1.
Table 1.1	To specify time-frames for the Department to approve or deny an action specified in the Table.
R9-17-108	To specify when registry identification cards, dispensary registration certificates, and laboratory registration certificates expire.
R9-17-109	To specify circumstances when and to whom notification is provided when the Department voids a registry identification card.
R9-17-201	To specify the debilitating medical conditions, a diagnosis with which makes an individual eligible for a qualifying patient registry identification card.
R9-17-202	To specify requirements for a qualifying patient or, for a qualifying patient who is under 18 year of age, the qualifying patient's custodial parent or legal guardian to apply for a registry identification card for the qualifying patient and, if applicable a designated caregiver for the qualifying patient.
R9-17-203	To specify the requirements for a qualifying patient to amend: a. A registry identification card to add a designated caregiver or to request a change of the qualifying patient's designated caregiver, b. A qualifying patient's address on a registry identification card when the qualifying patient or the qualifying patient's designated caregiver is authorized to cultivate marijuana, or c. A registry identification card to add authorization to cultivate marijuana.
R9-17-204	To specify the requirements for a qualifying patient or, for a qualifying patient who is under 18 year of age, the qualifying patient's custodial parent or legal guardian, to apply for renewal of a registry identification card for the qualifying patient and, if applicable, for the qualifying patient's designated caregiver.
R9-17-205	To specify the circumstances under which the Department will deny an application for a qualifying patient registry identification card or a designated caregiver registry identification card or revoke a qualifying patient's or designated caregiver's registry identification card, and how the Department will provide notice of the denial or revocation.
R9-17-301	To specify who the Department considers to be a principal officer or board member of an entity applying for or holding a dispensary registration certificate.
R9-17-303	To specify the process the Department will use to allocate dispensary registration certificates.
R9-17-304	To specify limitations on the number of dispensary registration certificate applications for which an individual may be an applicant, principal officer, or board member and how the Department will handle situations when the limitations are exceeded. To establish requirements for applying for a dispensary registration certificate. To specify that an entity with a dispensary registration certificate is required to apply for and obtain an approval to operate a dispensary before the entity begins operating a dispensary.
R9-17-305	To specify the requirements for an entity with a dispensary registration certificate to apply for an approval to operate a dispensary.
R9-17-306	To establish limitations on the transfer or assignment of a dispensary registration certificate, a change in the location of a dispensary or cultivation site, and dispensary's or cultivation site's ability to cultivate, manufacture, distribute, dispense, or sell medical marijuana at a new location.
R9-17-307	To specify the mechanism by which a dispensary may change the location of the dispensary or the dispensary's cultivation site or add a cultivation site, and establish that a request for a change may not be combined with a request to renew a dispensary registration certificate.

R9-17-308	To specify the requirements for an entity to renew a dispensary registration certificate.
R9-17-309	To provide notice of the Department’s right to enter and inspect a dispensary and, if applicable, the dispensary's cultivation site; To provide notice that the Department does not accept anonymous reports alleging a dispensary’s noncompliance with medical marijuana statutes and rules. To specify the conditions under which the Department may conduct an inspection. To specify the process to be followed if the Department identifies a violation.
R9-17-310	To specify the administrative actions a dispensary is required to take and the documents the dispensary is required to develop and maintain.
R9-17-311	To specify the requirements for a dispensary when submitting a request for a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary.
R9-17-312	To specify the requirements for a dispensary when submitting a request for renewing a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary.
R9-17-313	To specify the qualifications and responsibilities of a medical director for a dispensary.
R9-17-314	To specify the responsibilities of a dispensary agent when dispensing medical marijuana.
R9-17-315	To establish requirements for a dispensary to establish and maintain a qualifying patient record for each qualifying patient who obtains medical marijuana from the dispensary, including the content of the qualifying patient record and requirements for security of the qualifying patient record.
R9-17-316	To specify the requirements for a dispensary’s inventory control system to document information about the marijuana supply, for oversight of the inventory, for conducting an audit of the dispensary’s inventory, and for maintaining documentation related to the dispensary’s inventory control system.
R9-17-317	To specify how medical marijuana and marijuana products are required to be labeled before being dispensed to a qualifying patient or designated caregiver, or when being provided to another dispensary or to a laboratory for testing.
R9-17-317.01	To specify requirements related to the testing of marijuana or a marijuana product to determine whether the marijuana or marijuana product may be dispensed. To provide notice that a dispensary is required to provide to the Department upon request a sample of the dispensary's medical marijuana for analysis.
Table 3.1	To specify the analytes for which marijuana and marijuana products are required to be tested; the limits on the presence of microbial contaminants, heavy metals, residual solvents, pesticides, fungicides, growth regulators, and herbicide; and the determinants for potency.
R9-17-318	To specify the security requirements for a dispensary or the dispensary’s cultivation site or when a dispensary is transporting marijuana.
R9-17-319	To specify requirements related to the preparation, sale, or dispensing of edible food products containing marijuana.
R9-17-320	To specify requirements for a dispensary to ensure that buildings or equipment used by a dispensary for the cultivation, harvest, preparation, packaging, storage, infusion, or sale of medical marijuana are maintained in a clean and sanitary condition; and to reduce the possibility of contamination of marijuana by a dispensary agent.
R9-17-321	To specify requirements related to the physical plant of a dispensary and, if applicable, the dispensary’s cultivation site.

R9-17-322	To specify the circumstances under which the Department will deny an application for a dispensary registration certificate or revoke a dispensary's registration certificate, and how the Department will provide notice of the denial or revocation.
R9-17-323	To specify the circumstances under which the Department will deny an application for a dispensary agent registry identification card or revoke a dispensary agent's registry identification card, and how the Department will provide notice of the denial or revocation.
R9-17-324	To specify what requirements are different for dual licensees and how they differ.
R9-17-401	To specify who the Department considers to be an owner of an entity applying for or holding a dispensary registration certificate
R9-17-402	To establish the requirements for an entity to apply for a laboratory registration certificate. To specify that an owner of a laboratory is required to apply for a laboratory agent registry identification card for each laboratory agent within 72 hours after receiving a laboratory registration certificate. To specify that noncontiguous portions of a laboratory and a change in laboratory location both require separate laboratory registration certificates.
R9-17-402.01	To specify the requirements for an entity with a laboratory registration certificate to apply for an approval for testing.
R9-17-403	To specify the requirements for an entity to renew a laboratory registration certificate.
R9-17-404	To specify administrative requirements for an entity with a laboratory registration certificate.
R9-17-404.01	To provide notification about compliance monitoring, including inspections and proficiency testing by the Department. To specify the actions the Department may take in response to deficiencies found during compliance monitoring, including requirements related to corrective action plans.
R9-17-404.02	To specify the frequency of proficiency testing or accuracy testing, as applicable, and the mechanism by which an applicant or licensee may demonstrate proficiency in the methods used for the testing performed by the laboratory to help ensure the health of qualifying patients.
R9-17-404.03	To require that laboratory testing using chemical analytical methods for any of the analytes in Table 3.1 be performed by a method in documents incorporated by reference and with specified indicators of accuracy and reproducibility of testing results. To specify data qualifiers that may be used when reporting testing results. To specify reporting units for testing results.
R9-17-404.04	To require that laboratory testing for microbial contaminants be performed by a method in documents incorporated by reference. To specify technical requirements to ensure accuracy and reproducibility of testing results. To specify data qualifiers that may be used when reporting testing results. To specify reporting units for testing results.
R9-17-404.05	To establish minimum standards for quality assurance, including the development and implementation of a quality assurance plan and standard operation procedures, to help ensure the accuracy of testing results.
R9-17-404.06	To establish the minimum standards for the operation of a laboratory with a laboratory registration certificate, including the qualifications for laboratory agents performing testing, requirements for a testing record, and requirements for reporting testing results.
R9-17-404.07	To specify the mechanism by which an owner of a laboratory may request to a change to one or more parameters and for the Department to process a request.
R9-17-405	To specify the requirements for a laboratory when submitting a request for a laboratory registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory.

R9-17-406	To specify the requirements for a laboratory when submitting a request for renewal of a laboratory registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory.
R9-17-407	To specify the requirements for a laboratory's inventory control system to document information about the marijuana supply, for oversight of the inventory, for conducting an audit of the laboratory's inventory, and for maintaining documentation related to the laboratory's inventory control system.
R9-17-408	To specify security requirements for the areas of a laboratory where marijuana or marijuana products are being tested or stored for testing, including limiting access and having security equipment. To specify the security requirements for transporting marijuana or a marijuana product.
R9-17-409	To specify requirements related to the physical plant of a laboratory.
R9-17-410	To specify the circumstances under which the Department will deny an application for a laboratory registration certificate or revoke a laboratory's registration certificate, and how the Department will provide notice of the denial or revocation.
R9-17-411	To specify the circumstances under which the Department will deny an application for a laboratory agent registry identification card or revoke a laboratory agent's registry identification card, and how the Department will provide notice of the denial or revocation.

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
R9-17-103	The rule is effective, but the Chapter could be more effective if the requirements in subsections (B) through (D) were included in the Sections containing the requirements for the respective applications. This would make the rules in the Chapter more concise and the rules potentially more understandable. The content of subsection (A) may now be redundant with the requirements in the respective Sections, as well, because each application is required to be submitted in a Department-provided format, which is electronic. When the rules were originally adopted, a purely electronic application was a rarity, and the requirement made the rules more effective. However, now electronic applications are the norm in both state government and for business organizations as well.
R9-17-107	The rule would be just as effective and less burdensome if the time were increased for a dispensary or laboratory requesting approval to operate/test or make changes to respond to a request for information. Subsection (G) would be just as effective and the Chapter less burdensome if the requirement in R9-17-304(C)(3)(b) for submission of a fingerprint card for each principal officer and board member were moved into the subsection, so it was only required to be submitted if the applicant were allocated a dispensary registration certificate.
Table 1.1	The rule is effective but could be just as effective and less burdensome if the time-frame for an applicant to complete an application when amending or renewing a registry identification card were increased to 30 working days. The rule could also be just as effective and less burdensome if the time-frame were increased for a dispensary or laboratory to complete an application when requesting approval to operate/test or make changes.

R9-17-304	The rule is effective but could be just as effective and less burdensome if subsection (C)(1)(c)(iii) specified that the mailing address be in Arizona; subsections (C)(1)(g), (4), (5), (8), and (9) were removed; subsection (C)(2) were replaced with a requirement for documentation that the applicant is in good standing with the Arizona Corporation Commission; and the requirements in subsection (C)(3)(b) were included in R9-17-107(G). Subsection (C)(7) would be more effective if the rule included the timeframe for when signatures on the documentation regarding ownership were required to be obtained and for documentation from a non-applicant owner to be notarized to deter fraud.
R9-17-305	The rule would be more effective if the activities a dispensary plans to include in its operations were included in this rule, rather than in R9-17-304(C)(8)(b). The rule would also be more effective if, for a dispensary planning to prepare edible food items infused with marijuana, the dispensary submitted a copy of its license or permit of the location as a food establishment, issued under 9 A.A.C. 8, Article 1.
R9-17-307	The rule would be more effective if subsection (A)(3) were replaced with a requirement for a copy of documentation, issued by the local jurisdiction to the dispensary, authorizing occupancy of the location as a dispensary or the dispensary's proposed cultivation site. The rule would also be more effective if documentation related to the ownership of the proposed location were required, similar to the requirement in R9-17-304(C)(7).

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
R9-17-304	The cross-reference in subsection (C)(2) is inconsistent with the revised R9-17-301.

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
R9-17-101	To the extent that a definition can be enforced, the Department has not been enforcing, and plans to remove, the definition of "public place" pursuant to a court decision (CR2015-113021-001 SE).

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
R9-17-304	The rule could be clearer if subsections (A), (B), and (B)(1)(c)(i) were changed to clarify that an individual can be a principal officer or board member, but not an applicant. The rule would also be clearer if subsection (C)(1)(c)(iii) specified that the mailing address be in Arizona and subsection (C)(1)(d) specified that the individual submitting dispensary agent registry identification card applications is a principal officer or board member. The rule would also be clearer if subsection (C)(6) were revised to better describe what the documentation from the local jurisdiction is required to contain and if subsection (C)(7) better described what the documentation from the property owner is required to contain.
R9-17-305	The rule would be clearer if subsections (A)(5) and (7) specified that the site plan should show the property lines of the contiguous premises. The rule would be more concise if subsection (A)(3) were removed as being redundant with R9-17-304(C)(6) unless there had been a change in the location of the dispensary between the initial application and submission of the application for approval to operate the dispensary.
R9-17-307	The rule would be clearer if subsections (A)(1)(l) and (3) read "each principal officer and each board member," consistent with wording for the applications in R9-17-304 and R9-17-305, and if subsections (A)(4)(a) and (5)(a) specified that the site plan should show the property lines of the contiguous premises.
R9-17-308	The rule would be clearer if subsection (1)(m) read "each principal officer and each board member," consistent with wording for the applications in R9-17-304 and R9-17-305.
Table 3.1	The rule would be more concise if the phase-in testing for certain analytes were removed, since the start date of May 1, 2021, will soon be past.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

On November 2, 2010, Arizona voters passed I-04-2010, the Arizona Medical Marijuana Act (Act), which became Arizona Revised Statutes (A.R.S.) Title 36, Chapter 28.1. The Act allows a "qualifying patient" who has a "debilitating medical condition" to obtain an "allowable amount of marijuana" from a "nonprofit medical marijuana dispensary" and to possess and use the marijuana to treat or alleviate the debilitating medical condition or symptoms associated with the medical condition. The Act also required the Department to adopt and enforce a regulatory system for the distribution of marijuana for medical use, including a system for approving, renewing, and revoking the registration of qualifying patients, designated caregivers, dispensaries, and dispensary agents. The Department implemented A.R.S. Title 36, Chapter 28.1 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 17 in rules effective April 14, 2011.

Laws 2019, Ch. 318, subsequently required the Department to establish requirements for the certification and regulation of laboratories and laboratory agents and to change the time period for the validity of registration identification cards and registration certificates, as well as establish requirements for testing marijuana and

marijuana products to protect the health and safety of qualifying patients. Laws 2019, Ch. 318, gave the Department exempt rulemaking authority to carry out this rulemaking until January 19, 2021. The Department conducted this rulemaking in an iterative fashion, beginning by establishing requirements for the certification and regulation of laboratories and laboratory agents and changing the time period during which registration identification cards and registration certificates are valid, in rules effective as of August 27, 2019. The Department continued the rulemaking by establishing requirements, effective April 2, 2020, related to laboratory testing to enable dispensaries to test marijuana and marijuana product before dispensing by November 1, 2020, as required by A.R.S. § 36-2803(E). The Department made additional changes as part of the rulemaking to provide clarity, improve implementation, and reduce the burden on dispensaries and laboratories in rulemakings effective April 22, 2020; August 28, 2020; October 15, 2020; and November 1, 2020. After receiving input from stakeholders and other states, the Department completed a final revision of the rules under the exemption, effective January 15, 2021, revising the rules to make them as effective but less burdensome, as well as adding a revised process for allocating dispensary registration certificates to comply with statutory changes. As part of this rulemaking, all but five of the rules adopted in 2011 were revised, and 21 new rules were adopted. To comply with A.R.S. Title 36, Chapter 28.2, added as a result of Proposition 207, nine of the rules were again changed and one new rule adopted to include requirements related to dual licensees, in a rulemaking effective May 3, 2021.

The rules in 9 A.A.C. 17 contain requirements that affect approximately 305,000 qualifying patients, 878 designated caregivers, 130 dispensaries, 10,000 dispensary agents, 10 laboratories, and 136 laboratory agents. For the purpose of this economic impact comparison, annual costs/revenues are designated as minimal when \$5,000 or less, moderate when between \$5,000 and \$50,000, and substantial when \$50,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Article 1 provides definitions, time-frames, and expiration information; specifies fees, general requirements for submitting applications, and procedures for requesting changes to information on a registry identification card or requesting a replacement registry identification card; and identifies requirements related to adding a debilitating medical condition. Three of the 10 rules in Article 1 have not been revised since adopted in 2011. R9-17-104 and R9-17-105 contain requirements related to changing information on or requesting replacement of a registry identification card. The Department uses an electronic system for all applications and registry identification card-related requests, including obtaining information for a new registry identification card. The rules contain requirements to ensure that the individual using the electronic system to request a replacement or change to a registry identification card is the individual for whom the registry identification card was initially issued. If a cardholder has the required information/documents available, it may take the cardholder less than five minutes to make the request, thereby imposing at most a minimal burden on cardholders. The requirements help ensure the correct individual receives the replacement or changed registry identification card and provide a significant benefit to the cardholder to whom the registry identification card was initially issued and to the general public. R9-17-106 contains requirements related to requesting the addition of a debilitating medical condition. The Department, as required by rule, has accepted requests to add a debilitating medical condition twice a year. In the

past five years, the Department has received 37 requests for a variety of conditions including autism and anxiety, but no new disorders have been added on the basis of these requests. All but four of the requests were incomplete. Two of those that were complete were denied because the requestor did not provide evidence that the condition impairs activities of daily living, as specified in R9-17-106(B)(2)(a). The other two were denied because the requestor did not provide evidence that medical marijuana would provide a therapeutic or palliative effect on the condition, as specified in R9-17-106(B)(2)(b). The Department estimates that the Department may incur a moderate-to-substantial cost to review and process an application under this rule. As part of the 2019-2021 rulemaking, changes were made to the remaining Sections of Article 1 to include requirements for laboratories and laboratory agents. Although it has been less than two years since these changes were made, the Department anticipates that the changes will provide a significant benefit for all stakeholders in improving the clarity and inclusiveness of the rules.

In Article 2, which contains requirements for qualifying patients and designated caregivers, all but one of the rules (R9-17-201) were changed as part of the 2019-2021 rulemaking. R9-17-201 provides clarity by listing the debilitating medical conditions and, thus, affords a significant benefit to all stakeholders. In all other Sections, minor changes were made to clarify the rules, consistent with the changes proposed in the 2016 five-year-review report of these rules. The Department believes these changes also provide a significant benefit to stakeholders.

Requirements for dispensaries and dispensary agents are contained in Article 3. Two new rules, R9-17-317.01 and Table 3.1, were added effective April 2, 2020. These, as well as all but one of the other rules in the Article, have been revised since August 2020. Another rule for dual licensees was added as of May 3, 2021. The only rule that has not been changed, R9-17-319, specifies minimum requirements for edible food products. Changes were last made to five rules (R9-17-309, R9-17-315, R9-17-321, R9-17-322, and R9-17-323) effective August 28, 2020. These changes, many made at the request of stakeholders, made the rules as effective but less burdensome and clarified requirements. The rulemaking effective November 1, 2020, also as a result of stakeholder input, revised R9-17-314 and Table 3.1 to allow dispensaries to dispense medical marijuana or marijuana product in a container made of material that will not react with or leach into the medical marijuana or marijuana product, even if it not the same material in which a tested sample was sent to a laboratory for testing, and delayed testing requirements for certain analytes for which there was insufficient capacity for testing at the time. In the January 2021 rulemaking, changes were last made to R9-17-303, R9-17-304, R9-17-306, R9-17-307, R9-17-316, R9-17-317, R9-17-317.01, and R9-17-320 for allocating dispensary registration certificates to comply with statutory changes, as well as making changes described in the 2016 five-year-review report and continuing to make the rules just as effective but less burdensome. Additional changes were made to R9-17-301, R9-17-305, R9-17-308, R9-17-310, R9-17-311, R9-17-312, R9-17-313, and R9-17-318, and a new rule, R9-17-324, was added, to make the rules requirements consistent with A.R.S. Title 36, Chapter 28.2, for dispensaries also licensed as marijuana establishments according to 9 A.A.C. 18. The Department anticipates that these changes may impose up to substantial costs on dispensaries, while also providing significant benefits to qualifying patients and their families, designated caregivers, and the general public. However, the Department believes that the costs are the result of the

statutory changes, rather than the rules themselves, which have been revised with stakeholder input to impose the least costs necessary to achieve the statutory requirements.

The rules in Article 4 were initially adopted in the iteration of the rulemaking effective August 27, 2019, and include requirements for laboratories and laboratory agents. Three of these rules (R9-17-405, R9-17-406, and R9-17-411) specify requirements related to a laboratory agent registry identification card, consistent with requirements for other registry identification cards, and have not been revised since their adoption. As part of the changes effective April 2, 2020, R9-17-404.01 was adopted to specify requirements for monitoring compliance with requirements. This rule, as well as R9-17-408 and R9-17-410, have not been revised since then. In response to input from stakeholders, R9-17-402, R9-17-402.01, R9-17-403, R9-17-404.02, R9-17-404.07, and R9-17-407 were further revised, effective August 28, 2020, to clarify requirements and make the rules as effective but less burdensome. The remaining rules were again revised in January 2021 in the last iteration of the rulemaking. While the adoption of these rules and subsequent changes may impose up to substantial costs on laboratories, they also provide significant benefits to qualifying patients and their families, designated caregivers, and the general public by helping ensure that dispensed marijuana and marijuana products are safe to use. Again, the Department believes that the costs are the result of the statutory changes, rather than the rules themselves, which have been revised with stakeholder input to impose the least costs necessary to achieve the statutory requirements.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

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 2016 five-year-review report stated a plan to continue a rulemaking approved by Governor Brewer to revise several rules to address a court order and other identified issues and submit a Notice of Final Rulemaking to the Council by December 2017. A rulemaking to address the use of marijuana during pregnancy to comply with Laws 2016, Ch 92 was completed effective June 6, 2017. Other issues identified in the 2016 five-year-review report were addressed as part of the exempt rulemaking completed in several iterations by the Department during 2019 through 2021 to comply with Laws 2019, Ch. 318.

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 in 9 A.A.C 17 specify requirements related to medical marijuana and marijuana products to comply with A.R.S. Title 36, Chapter 28.1 and, with respect to dual licensees, Chapter 28.2. Almost all the rules were adopted or revised within the past 20 months, with a great deal of stakeholder input, to comply with statutory changes to ensure that medical marijuana and marijuana products are safe, without contamination from harmful

microorganisms, pesticides, heavy metals, or residual solvents. The Department agrees with the Legislature that the benefits of having a safe supply of medical marijuana and marijuana products outweigh the probable costs of the rules. In following an iterative process with this rulemaking, the Department was able to gauge the burden of the rules and work with stakeholders to minimize this burden, consistent with the statutory requirements. However, some changes could not be made under the exception granted for the rulemaking, as described in paragraphs 3 and 6 of this report. Besides these issues, the Department believes the rules in the Chapter impose the least burden and costs to regulated persons necessary to comply with the regulatory objectives of the rules.

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 currently no corresponding federal requirements.

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:**

A registration certificate for a dispensary, issued according to A.R.S. § 36-2804, or laboratory, issued according to A.R.S. § 36-2804.07, is specific to the certificate holder, type of facility, facility location, and scope of services provided. As such, a general permit is not applicable and is not used. Except when associated with authorization for the cultivation of marijuana, a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent is a general permit.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to address issues described in paragraphs 3, 5, and 6 of this report through expedited rulemaking. If this report is approved, the Department will request an exception from the rulemaking moratorium. If the exception is granted, the Department anticipates submitting a Notice of Final Expedited Rulemaking to the Council by January 2022.

TITLE 9. HEALTH SERVICES
CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA
PROGRAM

Section

- R9-17-101. Definitions
- R9-17-102. Fee
- R9-17-103. Application Submission
- R9-17-104. Changing Information on a Registry Identification Card
- R9-17-105. Requesting a Replacement Registry Identification Card
- R9-17-106. Adding a Debilitating Medical Condition
- R9-17-107. Time-frames
- Table 1.1
- R9-17-108. Expiration of a Registry Identification Card, Dispensary Registration Certificate, or Laboratory Registration Certificate
- R9-17-109. Notifications and Void Registry Identification Cards

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

Section

- R9-17-201. Debilitating Medical Conditions
- R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver
- R9-17-203. Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card
- R9-17-204. Renewing a Qualifying Patient's or Designated Caregiver's Registry Identification Card
- R9-17-205. Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

Section

- R9-17-301. Principal Officers and Board Members
- R9-17-302. Repealed
- R9-17-303. Dispensary Registration Certificate Allocation Process
- R9-17-304. Applying for a Dispensary Registration Certificate
- R9-17-305. Applying for Approval to Operate a Dispensary
- R9-17-306. Changes to a Dispensary Registration Certificate
- R9-17-307. Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site

- R9-17-308. Renewing a Dispensary Registration Certificate
- R9-17-309. Inspections
- R9-17-310. Administration
- R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card
- R9-17-312. Submitting an Application to Renew a Dispensary Agent's Registry Identification Card
- R9-17-313. Medical Director
- R9-17-314. Dispensing Medical Marijuana
- R9-17-315. Qualifying Patient Records
- R9-17-316. Inventory Control System
- R9-17-317. Product Labeling
- R9-17-317.01. Analysis of Medical Marijuana or a Marijuana Product
 - Table 3.1. Analytes
- R9-17-318. Security
- R9-17-319. Edible Food Products
- R9-17-320. Cleaning and Sanitation
- R9-17-321. Physical Plant
- R9-17-322. Denial or Revocation of a Dispensary Registration Certificate
- R9-17-323. Denial or Revocation of a Dispensary Agent's Registry Identification Card
- R9-17-324. Dual Licensees

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

- R9-17-401. Owner
- R9-17-402. Applying for a Laboratory Registration Certificate
 - R9-17-402.01. Applying for Approval for Testing
- R9-17-403. Renewing a Laboratory Registration Certificate
- R9-17-404. Administration
 - R9-17-404.01. Compliance Monitoring
 - R9-17-404.02. Proficiency Testing; Accuracy Testing
 - R9-17-404.03. Method Criteria and References for Chemical Analyses
 - R9-17-404.04. Method Criteria and References for Analyses for Microbial Contaminants
 - R9-17-404.05. Quality Assurance
 - R9-17-404.06. Operations
 - R9-17-404.07. Adding or Removing Parameters for Testing
- R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card
- R9-17-406. Submitting an Application to Renew a Laboratory Agent's Registry Identification Card
- R9-17-407. Inventory Control System

Unofficial version of the Rules in 9 A.A.C. 17, effective May 3, 2021

- R9-17-408. Security
- R9-17-409. Physical Plant
- R9-17-410. Denial or Revocation of a Laboratory Registration Certificate
- R9-17-411. Denial or Revocation of a Laboratory Agent's Registry Identification Card

ARTICLE 1. GENERAL

R9-17-101. Definitions

In addition to the definitions in A.R.S. § 36-2801, the following definitions apply in this Chapter unless otherwise stated:

1. “Accreditation” means being deemed as technically competent under ISO 17025 by the:
 - a. American Association of Laboratory Accreditation,
 - b. Perry Johnson Laboratory Accreditation,
 - c. ANSI National Accreditation Board, or
 - d. International Accreditation Services.
2. “Accuracy testing” means a mechanism in which a laboratory performs testing on samples with known characteristics, prepared by the laboratory, to determine a laboratory agent’s ability to analyze samples within specific acceptance criteria.
3. “Acquire” means to obtain through any type of transaction and from any source.
4. “Activities of daily living” means ambulating, bathing, dressing, grooming, eating, toileting, and getting in and out of bed.
5. “Amend” means adding or deleting information on an individual’s registry identification card that affects the individual’s ability to perform or delegate a specific act or function.
6. “Analyte” means a specific substance for which testing is performed by a laboratory.
7. “Applicant” means:
 - a. An individual submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent;
 - b. An entity submitting an application for a dispensary registration certificate or approval to operate a dispensary; or
 - c. An individual or entity submitting an application for a laboratory registration certificate, approval to test, or approval to change parameters.
8. “Batch” means:
 - a. When referring to cultivated medical marijuana, a specific lot of medical marijuana grown from one or more seeds or cuttings that are planted and harvested at the same time;
 - b. When referring to marijuana products, a specific amount of a marijuana product infused, manufactured, or prepared for sale from the same set of ingredients at the same time; and
 - c. When referring to testing of medical marijuana or a marijuana product, a specific set of samples prepared and tested during the same run using the same equipment.
9. “Batch number” means a unique numeric or alphanumeric identifier assigned to a batch by a dispensary when:

- a. The batch of medical marijuana is planted, or
 - b. The batch of a marijuana product is infused, manufactured, or prepared for sale.
10. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
11. “Change” means:
- a. When used in relation to a registry identification card, adding or deleting information on an individual’s registry identification card that does not substantively affect the individual’s ability to perform or delegate a specific act or function;
 - b. When used in relation to a place, moving to a different location;
 - c. When used in relation to an individual, selecting a different individual to perform specific actions;
 - d. When used in relation to parameters, revising a laboratory’s standard operating procedures or quality assurance plan, required in R9-17-404.06, due to:
 - i. Adding **or** removing a parameter,
 - ii. Altering a testing method, or
 - iii. Using a different instrument for performing a test; and
 - e. When used in relation to testing results, altering the testing results in any way and for any reason.
12. “Commercial device” means the same as in A.R.S. § 3-3451.
13. “Contaminant” means matter, pollutant, hazardous substance, or other substance that is not intended to be part of dispensed medical marijuana or a marijuana product.
14. “Cultivation site” means the one additional location where marijuana may be cultivated, infused, or prepared for sale by and for a dispensary.
15. “Current photograph” means an image of an individual, taken no more than 60 calendar days before the submission of the individual’s application, in a Department-approved electronic format capable of producing an image that:
- a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
 - b. Is 2 inches by 2 inches in size;
 - c. Is in natural color;
 - d. Is a front view of the individual’s full face, without a hat or headgear that obscures the hair or hairline;
 - e. Has a plain white or off-white background; and
 - f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
16. “Denial” means the Department’s final decision not to issue a registry identification card, a dispensary registration certificate, a laboratory registration certificate, or an approval of a change of dispensary or a

dispensary's cultivation site location, to an applicant because the applicant or the application does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.

17. "Dispensary" means the same as "nonprofit medical marijuana dispensary" as defined in A.R.S. § 36-2801.
18. "Dispensary agent" means the same as "nonprofit medical marijuana dispensary agent" as defined in A.R.S. § 36-2801.
19. "Dual licensee" means the same as in A.R.S. § 36-2850.
20. "Edible food product" means a substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human oral consumption.
21. "Enclosed area" when used in conjunction with "enclosed, locked facility" means outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate.
22. "Entity" means the same as in A.R.S. § 29-2102.
23. "Generally accepted accounting principles" means the set of financial reporting standards established by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or another specialized body dealing with accounting and auditing matters.
24. "Geographic area" means the same as in A.R.S. § 36-2803.01.
25. "In-state financial institution" means the same as in A.R.S. § 6-101.
26. "Inhalable" means intended for use through intake into the lungs of an individual.
27. "Laboratory" means the same as "independent third-party laboratory" as defined in A.R.S. § 36-2801.
28. "Laboratory agent" means the same as "independent third-party laboratory agent" as defined in A.R.S. § 36-2801.
29. "Legal guardian" means an adult who is responsible for a minor:
 - a. Through acceptance of guardianship of the minor through a testamentary appointment or an appointment by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2; or
 - b. As a "custodian" as defined in A.R.S. § 8-201.
30. "Marijuana establishment" means the same as in A.R.S. § 36-2850.
31. "Medical record" means the same as:
 - a. "Adequate records" as defined in A.R.S. § 32-1401,
 - b. "Adequate medical records" as defined in A.R.S. § 32-1501,
 - c. "Adequate records" as defined in A.R.S. § 32-1800, or
 - d. "Adequate records" as defined in A.R.S. § 32-2901.
32. "Out-of-state financial institution" means the same as in A.R.S. § 6-101.
33. "Parameter" means the combination of a particular type of sample with a specific instrument or equipment by which the sample will be tested for a specific analyte or characteristic.

34. “Proficiency testing” means a mechanism in which samples with known characteristics are submitted to a laboratory for analysis to determine a laboratory agent’s ability to analyze samples within specific acceptance criteria.
35. “Proficiency testing service” means an independent company or other person acceptable to the Department, based on ISO/IEC 17043:2010 certification, that:
- a. Is the source for samples with known characteristics for proficiency testing, and
 - b. Assesses the acceptability of a laboratory agent’s results from the samples with known characteristics during proficiency testing.
36. “Private school” means the same as in A.R.S. § 15-101.
37. “Public place”:
- a. Means any location, facility, or venue that is not intended for the regular exclusive use of an individual or a specific group of individuals;
 - b. Includes, but not is limited to:
 - i. Airports;
 - ii. Banks;
 - iii. Bars;
 - iv. Child care facilities;
 - v. Child care group homes during hours of operation;
 - vi. Common areas of apartment buildings, condominiums, or other multifamily housing facilities;
 - vii. Educational facilities;
 - viii. Entertainment facilities or venues;
 - ix. Health care institutions, except as provided in subsection (24)(c);
 - x. Hotel and motel common areas;
 - xi. Laundromats;
 - xii. Libraries;
 - xiii. Office buildings;
 - xiv. Parking lots;
 - xv. Parks;
 - xvi. Public transportation facilities;
 - xvii. Reception areas;
 - xviii. Restaurants;
 - xix. Retail food production or marketing establishments;
 - xx. Retail service establishments;
 - xxi. Retail stores;
 - xxii. Shopping malls;

- xxiii. Sidewalks;
 - xxiv. Sports facilities;
 - xxv. Theaters; and
 - xxvi. Waiting rooms; and
- c. Does not include:
- i. Nursing care institutions as defined in A.R.S. § 36-401,
 - ii. Hospices as defined in A.R.S. § 36-401,
 - iii. Assisted living centers as defined in A.R.S. § 36-401,
 - iv. Assisted living homes as defined in A.R.S. § 36-401,
 - v. Adult day health care facilities as defined in A.R.S. § 36-401,
 - vi. Adult foster care homes as defined in A.R.S. § 36-401, or
 - vii. Private residences.
38. “Public school” means the same as “school” as defined in A.R.S. § 15-101.
39. “Registry identification number” means the random 20-digit alphanumeric identifier generated by the Department, containing at least four numbers and four letters, issued by the Department to a qualifying patient, designated caregiver, dispensary, dispensary agent, laboratory, or laboratory agent.
40. “Revocation” means the Department’s final decision that an individual’s registry identification card, a dispensary registration certificate, or a laboratory registration certificate is rescinded because the individual, the dispensary, or the laboratory does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
41. “Sample” means:
- a. A representative portion of a larger quantity of medical marijuana or a marijuana product,
 - b. A specific quantity of a substance or set of substances to be used for testing purposes, or
 - c. To collect the representative portion in subsection (39)(a).
42. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

R9-17-102. Fees

- A.** An applicant submitting an application to the Department shall submit the following nonrefundable fees:
- 1. Except as provided in R9-17-303(D), for registration of a dispensary, \$5,000;
 - 2. To renew the registration of a dispensary, \$1,000;
 - 3. To change the location of a dispensary, \$2,500;
 - 4. To change the location of a dispensary’s cultivation site or add a cultivation site, \$2,500;
 - 5. For a registry identification card for a:
 - a. Qualifying patient, except as provided in subsection (B), \$150;

- b. Designated caregiver, \$200;
 - c. Dispensary agent, \$500; and
 - d. Laboratory agent, \$500;
6. For renewing a registry identification card for a:
- a. Qualifying patient, except as provided in subsection (B), \$150;
 - b. Designated caregiver, \$200;
 - c. Dispensary agent, \$500; and
 - d. Laboratory agent, \$500;
7. For amending or changing a registry identification card, \$10;
8. For requesting a replacement registry identification card, \$10;
9. For registration of a laboratory, \$5,000; and
10. To renew the registration of a laboratory, \$1,000.
- B.** A qualifying patient may pay a reduced fee of \$75 if the qualifying patient submits, with the qualifying patient's application for a registry identification card or the qualifying patient's application to renew the qualifying patient's registry identification card, a copy of an eligibility notice or electronic benefits transfer card demonstrating current participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program.

R9-17-103. Application Submission

- A.** An applicant submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent, shall submit the application electronically in a Department-provided format.
- B.** A residence address or mailing address submitted for a qualifying patient or designated caregiver as part of an application for a registry identification card is located in Arizona.
- C.** A mailing address submitted for a principal officer or board member as part of a dispensary certificate registration application or as part of an application for a dispensary agent registration identification card is located in Arizona.
- D.** A mailing address submitted for an owner as a part of a laboratory registration certificate application or as part of an application for a laboratory agent registration identification card is located in Arizona.

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

Except as provided in R9-17-203(B) and (C), to make a change to a cardholder's name or address on the cardholder's registry identification card, the cardholder shall submit to the Department, within 10 working days after the change, a request for the change that includes:

- 1. The cardholder's name and the registry identification number on the cardholder's current registry

identification card;

2. The cardholder's new name or address, as applicable;
3. For a change in the cardholder's name, one of the following with the cardholder's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the cardholder's U.S. passport;
4. For a change in address, the county where the new address is located;
5. The effective date of the cardholder's new name or address; and
6. The applicable fee in R9-17-102 for changing a registry identification card.

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

To request a replacement card for a cardholder's registry identification card that has been lost, stolen, or destroyed, the cardholder shall submit to the Department, within 10 working days after the cardholder's registry identification card was lost, stolen, or destroyed, a request for a replacement card that includes:

1. The cardholder's name and date of birth;
2. If known, the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card;
3. If the cardholder cannot provide the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card, a copy of one of the following documents that the cardholder submitted when the cardholder obtained the registry identification card:
 - a. Arizona driver's license,
 - b. Arizona identification card,
 - c. Arizona registry identification card, or
 - d. Photograph page in the cardholder's U.S. passport; and
4. The applicable fee in R9-17-102 for requesting a replacement registry identification card.

R9-17-106. Adding a Debilitating Medical Condition

- A. An entity may request the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 by submitting to the Department, at the times specified in subsection (C), the following in writing:
1. The entity's name;
 2. The entity's mailing address, name of contact individual, telephone number, and, if applicable, e-mail address;
 3. The name of the medical condition the entity is requesting be added;
 4. A description of the symptoms and other physiological effects experienced by an individual suffering from the medical condition or a treatment of the medical condition that may impair the ability of the

individual to accomplish activities of daily living;

5. The availability of conventional medical treatments to provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition;
6. A summary of the evidence that the use of marijuana will provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition; and
7. Articles, published in peer-reviewed scientific journals, reporting the results of research on the effects of marijuana on the medical condition or a treatment of the medical condition supporting why the medical condition should be added.

B. The Department shall:

1. Acknowledge in writing the Department's receipt of a request for the addition of a medical condition to the list of debilitating medical conditions listed in R9-17-201 within 30 calendar days after receiving the request;
2. Review the request to determine if the requester has provided evidence that:
 - a. The specified medical condition or treatment of the medical condition impairs the ability of the individual to accomplish activities of daily living, and
 - b. Marijuana usage provides a therapeutic or palliative benefit to an individual suffering from the medical condition or treatment of the medical condition;
3. Within 90 calendar days after receiving the request, notify the requester that the Department has determined that the information provided by the requester:
 - a. Meets the requirements in subsection (B)(2) and the date the Department will conduct a public hearing to discuss the request; or
 - b. Does not meet the requirements in subsection (B)(2), the specific reason for the determination, and the process for requesting judicial review of the Department's determination pursuant to A.R.S. Title 12, Chapter 7, Article 6;
4. If applicable:
 - a. Schedule a public hearing to discuss the request;
 - b. Provide public notice of the public hearing by submitting a Notice of Public Information to the Office of the Secretary of State, for publication in the *Arizona Administrative Register* at least 30 calendar days before the date of the public hearing;
 - c. Post a copy of the request on the Department's web site for public comment at least 30 calendar days before the date of the public hearing; and
 - d. Hold the public hearing no more than 150 calendar days after receiving the request; and
5. Within 180 calendar days after receiving the request:
 - a. Add the medical condition to the list of debilitating medical conditions, or
 - b. Provide written notice to the requester of the Department's decision to deny the request that includes:

- i. The specific reasons for the Department's decision; and
 - ii. The process for requesting judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- C. The Department shall accept requests for the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 in January and July of each calendar year starting in January 2012.

R9-17-107. Time-frames

- A. Within the administrative completeness review time-frame for each type of approval in Table 1.1, the Department shall:
1. Issue a registry identification card, a dispensary registration certificate, an approval to operate a dispensary, a laboratory registration certificate, an approval for testing, or an approval to add a parameter;
 2. Provide a notice of administrative completeness to an applicant; or
 3. Provide a notice of deficiencies to an applicant, including a list of the information or documents needed to complete the application.
- B. An application for approval to operate a dispensary is not complete until the date the applicant states on a written notice provided to the Department according to R9-17-305 that the dispensary is ready for an inspection by the Department.
- C. A laboratory's application for approval for testing is not complete until the date the applicant states on a written notice provided to the Department according to R9-17-402.01 that the laboratory is ready for an inspection by the Department.
- D. If the Department provides a notice of deficiencies to an applicant:
1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant; and
 2. The Department shall consider the application withdrawn if the applicant does not submit the missing information or documents to the Department within the time-frame in Table 1.1.
- E. Within the substantive review time-frame for each type of approval in Table 1.1, the Department:
1. According to subsection (H), shall issue or deny:
 - a. A registry identification card, dispensary registration certificate, or laboratory registration certificate; or
 - b. Approval to operate a dispensary, approval for testing, or approval to add a parameter;
 2. May complete an inspection that may require more than one visit to a dispensary and, if applicable, the dispensary's cultivation site;
 3. May complete an inspection that may require more than one visit to a laboratory; and
 4. May make one written comprehensive request for more information, unless the Department and the

applicant agree in writing to allow the Department to submit supplemental requests for information.

- F.** If the Department issues a written comprehensive request or a supplemental request for information:
1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives all of the information requested, and
 2. The applicant shall submit to the Department all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.
- G.** If an applicant for an initial dispensary registration certificate is allocated a dispensary registration certificate as provided in R9-17-303, the Department shall provide a written notice to the applicant of the allocation of the dispensary registration certificate that contains the dispensary's registry identification number.
1. After the applicant receives the written notice of the allocation, the applicant shall submit to the Department for each principal officer or board member for whom fingerprints were submitted according to R9-17-304(C)(3)(b):
 - a. An application for a dispensary agent registry identification card that includes:
 - i. The principal officer's or board member's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. The principal officer's or board member's residence address and mailing address;
 - iii. The county where the principal officer or board member resides;
 - iv. The principal officer's or board member's date of birth;
 - v. The identifying number on the applicable card or document in subsection (G)(1)(b)(i) through (v);
 - vi. The name and registry identification number of the dispensary;
 - vii. One of the following:
 - (1) A statement that the principal officer or board member does not currently hold a valid registry identification card, or
 - (2) The assigned registry identification number for each valid registry identification card currently held by the principal officer or board member;
 - viii. A statement signed by the principal officer or board member pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - ix. An attestation that the information provided in and with the application is true and correct; and
 - x. The signature of the principal officer or board member and the date the principal officer or board member signed;
 - b. A copy the principal officer's or board member's:

- i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the principal officer's or board member's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the principal officer or board member:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U. S. Certificate of Naturalization, or
 - (3) U. S. Certificate of Citizenship;
 - c. A current photograph of the principal officer or board member; and
 - d. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.
 2. After receipt of the information and documents in subsection (G)(1), the Department shall review the information and documents.
 - a. If the information and documents for at least one of the principal officers or board members complies with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
 - i. A dispensary agent registry identification card to any principal officer or board member whose dispensary agent registry identification card application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
 - ii. The dispensary registration certificate.
 - b. If the information and documents for a dispensary agent registry identification card application for any principal officer or board member does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the dispensary agent registry identification card application and provide notice to the principal officer or board member and to the dispensary that includes:
 - i. The specific reasons for the denial; and
 - ii. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- H.** If an application for an initial laboratory registration certificate is approved, the Department shall review the information and documents submitted according to R9-17-402(A)(4) and:
1. If the information and documents for at least one of the owners comply with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
 - a. A laboratory agent registry identification card to any owner who complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
 - b. The laboratory registration certificate; and
 2. If the information and documents submitted according to R9-17-402(A)(4) for an owner do not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the owner a laboratory

agent registry identification card and provide notice to the owner and to the laboratory that includes:

- a. The specific reasons for the denial; and
- b. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

I. The Department shall issue:

1. A registry identification card, renewal of a dispensary registration certificate, an approval to operate a dispensary, renewal of a laboratory registration certificate, an approval for testing, or an approval to add a parameter, as applicable, if the Department determines that the applicant complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
2. For an applicant for a registry identification card, a denial that includes the reason for the denial and the process for requesting judicial review if:
 - a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information;
3. For an applicant for an initial dispensary registration certificate, if the Department determines that the dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter:
 - a. A dispensary registration certificate, if not all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; or
 - b. Written notice that:
 - i. The dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
 - ii. The applicant was not allocated a dispensary registration certificate according to the criteria and processes in R9-17-303 because all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; and
 - iii. The written notice is not a denial and is not considered a final decision of the Department subject to administrative review; or
4. For an applicant for a dispensary registration certificate, an approval to operate, a laboratory registration certificate, an approval for testing, or an approval to add a parameter, a denial that includes the reason for the denial and the process for administrative review if:
 - a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written

comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information

Table 1.1 Time-frames

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for applicant to complete application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)
Changing a registry identification card	§ 36-2808	10	10	5	5
Requesting a replacement registry identification card	§ 36-2804.06	5	5	2	3
Applying for a registry identification card for a qualifying patient or a designated caregiver	§ 36-2804.02(A)	15	30	5	10
Amending a registry identification card for a qualifying patient or a designated caregiver	§ 36-2808	10	10	5	5
Renewing a qualifying patient's or designated caregiver's registry identification card	§§ 36-2804.02(A) and 36-2804.06	15	15	5	10
Applying for a dispensary registration certificate	§ 36-2804	30	10	5	25
Applying for approval to operate a dispensary	R9-17-305	45	-	15	30
Changing a dispensary location or adding or changing a dispensary's cultivation site location	§ 36-2804 and R9-17-307	90	90	30	60
Renewing a dispensary registration certificate	§ 36-2804.06	15	15	5	10
Applying for a dispensary agent registry identification	§§ 36-2804.01 and 36-2804.03	15	30	5	10

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card					
Renewing a dispensary agent's registry identification card	§ 36-2804.06	15	15	5	10
Applying for a laboratory registration certificate	§ 36-2804.07	90	90	30	60
Applying for approval for testing	R9-17-402.01	90	90	30	60
Renewing a laboratory registration certificate	§ 36-2804.06	15	15	5	10
Applying to add a parameter	R9-17-404.07	90	90	30	60
Applying for a laboratory agent registry identification card	§ 36-2804.01	15	30	5	10
Renewing a laboratory agent's registry identification card	§ 36-2804.06	15	15	5	10

R9-17-108. Expiration of a Registry Identification Card, Dispensary Registration Certificate, or Laboratory Registration Certificate

- A. Except as provided in subsection (B), a registry identification card issued to a qualifying patient, designated caregiver, dispensary agent, or laboratory agent is valid for two years after the date of issuance.
- B. If the Department issues a registry identification card to a qualifying patient, designated caregiver, dispensary agent, or laboratory agent based on a request for a replacement registry identification card or an application to change or amend a registry identification card, the replacement, changed, or amended registry identification card shall have the same expiration date as the registry identification card being replaced, changed, or amended.
- C. Except as provided in subsection (D), a dispensary registration certificate is valid for two years after the date of issuance.
- D. If the Department issues an amended dispensary registration certificate based on a change of location or an addition of a cultivation site, the dispensary registration certificate shall have the same expiration date as the dispensary registration certificate previously held by the dispensary.
- E. An approval to operate a dispensary shall have the same expiration date as the dispensary registration certificate associated with the approval to operate the dispensary.
- F. A laboratory registration certificate is valid for two years after the original date of issuance.
- G. A laboratory's approval for testing shall have the same expiration date as the laboratory registration certificate associated with the laboratory's approval to test.

R9-17-109. Notifications and Void Registry Identification Cards

- A. The Department shall provide written notice that a cardholder's registry identification card is void and no longer valid under A.R.S. Title 36, Chapter 28.1 and this Chapter to a:
 - 1. Qualifying patient when the Department receives notification from:
 - a. The qualifying patient that the qualifying patient no longer has a debilitating medical condition, or
 - b. The physician who provided the qualifying patient's written certification that the:
 - i. Qualifying patient no longer has a debilitating medical condition,
 - ii. Physician no longer believes that the qualifying patient would receive therapeutic or palliative benefit from the medical use of marijuana, or
 - iii. Physician believes that the qualifying patient is not using the medical marijuana as recommended;
 - 2. Designated caregiver when:
 - a. The Department receives notification from the designated caregiver's qualifying patient that the designated caregiver no longer assists the qualifying patient with the medical use of marijuana, or
 - b. The registry identification card for the qualifying patient that is listed on the designated caregiver's registry identification card is no longer valid;

3. Dispensary agent when:

- a. The Department receives the written notification, required in R9-17-310(A)(9), that the dispensary agent:
 - i. No longer serves as a principal officer, board member, or medical director for the dispensary;
 - ii. Is no longer employed by the dispensary; or
 - iii. No longer provides volunteer service at or on behalf of the dispensary; or
- b. The registration certificate for the dispensary that is listed on the dispensary agent's registry identification card is no longer valid; or

4. Laboratory agent when:

- a. The Department receives the written notification, required in R9-17-404(10), that the laboratory agent no longer:
 - i. Serves as an owner for the laboratory,
 - ii. Is employed by the laboratory, or
 - iii. Provides volunteer service at or on behalf of the laboratory; or
- b. The registration certificate for the laboratory that is listed on the laboratory agent's registration identification card is no longer valid.

B. The Department shall void a qualifying patient's registry identification card:

- 1. When the Department receives notification that the qualifying patient is deceased; or
- 2. For a qualifying patient under 18 years of age, when the qualifying patient's designated caregiver's registry identification card is revoked.

C. The written notice required in subsection (A) that a registry identification card is void is not a revocation and is not considered a final decision of the department subject to judicial review.

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

R9-17-201. Debilitating Medical Conditions

An individual applying for a qualifying patient registry identification card shall have a diagnosis from a physician of at least one of the following debilitating medical conditions:

1. Cancer;
2. Glaucoma;
3. Human immunodeficiency virus;
4. Acquired immune deficiency syndrome;
5. Hepatitis C;
6. Amyotrophic lateral sclerosis;
7. Crohn's disease;
8. Agitation of Alzheimer's disease;
9. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces cachexia or wasting syndrome;
10. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe and chronic pain;
11. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe nausea;
12. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces seizures, including those characteristic of epilepsy;
13. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe or persistent muscle spasms, including those characteristic of multiple sclerosis; or
14. A debilitating medical condition approved by the Department under A.R.S. § 36-2801.01 and R9-17-106.

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver

- A.** Except for a qualifying patient who is under 18 years of age, a qualifying patient is not required to have a designated caregiver.
- B.** A qualifying patient may have only one designated caregiver at any given time.
- C.** Except for a qualifying patient who is under 18 years of age, if the information submitted for a qualifying patient complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the information for the qualifying patient's designated caregiver does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue the registry identification card for the qualifying patient separate from issuing a

registry identification card for the qualifying patient's designated caregiver.

- D.** If the Department issues a registry identification card to a qualifying patient under subsection (C), the Department shall continue the process for issuing or denying the qualifying patient's designated caregiver's registry identification card.
- E.** The Department shall not issue a designated caregiver's registry identification card before the Department issues the designated caregiver's qualifying patient's registry identification card.
- F.** Except as provided in subsection (G), to apply for a registry identification card, a qualifying patient shall submit to the Department the following:
 - 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's:
 - i. First name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. Date of birth; and
 - iii. Gender;
 - b. Except as provided in subsection (F)(1)(i), the qualifying patient's residence address and mailing address;
 - c. The county where the qualifying patient resides;
 - d. The qualifying patient's e-mail address;
 - e. The identifying number on the applicable card or document in subsection (F)(2)(a) through (e);
 - f. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
 - g. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - h. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
 - i. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
 - j. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - k. An attestation that the information provided in the application is true and correct; and
 - l. The signature of the qualifying patient and date the qualifying patient signed;
 - 2. A copy of the qualifying patient's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;

- d. Photograph page in the qualifying patient's U.S. passport; or
- e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
- 3. A current photograph of the qualifying patient;
- 4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
- 5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
 - a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - d. An identification, initialed by the physician, of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - e. If the debilitating medical condition identified in subsection (F)(5)(d) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - f. A statement, initialed by the physician, that the physician:
 - i. Has established a medical record for the qualifying patient, and
 - ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
 - h. The date the physician conducted the in-person physical examination of the qualifying patient;
 - i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:

- i. Medical records including medical records from other treating physicians from the previous 12 months,
 - ii. Response to conventional medications and medical therapies, and
 - iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
 - k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - l. A statement, initialed by the physician, that, if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
 - m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:
 - i. The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
 - ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
 - n. An attestation that the information provided in the written certification is true and correct; and
 - o. The physician's signature and the date the physician signed;
6. If the qualifying patient is designating a caregiver, the following in a Department-provided format:
- a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The designated caregiver's date of birth;
 - c. The designated caregiver's residence address and mailing address;
 - d. The county where the designated caregiver resides;
 - e. The identifying number on the applicable card or document in subsection (F)(6)(i)(i) through (v);
 - f. One of the following:
 - i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - g. An attestation signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;

- h. A statement signed by the designated caregiver:
 - i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
- i. A copy of the designated caregiver's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the designated caregiver's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U.S. Certificate of Naturalization, or
 - (3) U.S. Certificate of Citizenship;
- j. A current photograph of the designated caregiver; and
- k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The designated caregiver's fingerprints on a fingerprint card that includes:
 - (1) The designated caregiver's first name; middle initial, if applicable; and last name;
 - (2) The designated caregiver's signature;
 - (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - (4) The designated caregiver's address;
 - (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - (6) The designated caregiver's date of birth;
 - (7) The designated caregiver's Social Security number;
 - (8) The designated caregiver's citizenship status;
 - (9) The designated caregiver's gender;
 - (10) The designated caregiver's race;
 - (11) The designated caregiver's height;
 - (12) The designated caregiver's weight;
 - (13) The designated caregiver's hair color;
 - (14) The designated caregiver's eye color; and
 - (15) The designated caregiver's place of birth; or
 - ii. If the designated caregiver's fingerprints and information required in subsection (F)(6)(k)(i) were

submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and

7. The applicable fees in R9-17-102 for applying for:
 - a. A qualifying patient registry identification card; and
 - b. If applicable, a designated caregiver registry identification card.
- G.** To apply for a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:
 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's:
 - i. First name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. Date of birth; and
 - iii. Gender;
 - b. The qualifying patient's residence address and mailing address;
 - c. The county where the qualifying patient resides;
 - d. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - e. The identifying number on the applicable card or document in subsection (G)(5)(a) through (e);
 - f. The qualifying patient's custodial parent's or legal guardian's residence address and mailing address;
 - g. The county where the qualifying patient's custodial parent or legal guardian resides;
 - h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
 - i. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;
 - j. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the patient's medical record, maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;
 - k. The qualifying patient's custodial parent's or legal guardian's date of birth;
 - l. Whether the qualifying patient's custodial parent or legal guardian is requesting authorization for cultivating medical marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any

- clinical studies needing human subjects for research on the medical use of marijuana;
- n. Whether the individual submitting the application on behalf of the qualifying patient under 18 years of age is the qualifying patient's custodial parent or legal guardian;
 - o. One of the following:
 - i. A statement that the qualifying patient's custodial parent or legal guardian does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the qualifying patient's custodial parent or legal guardian for each valid registry identification card currently held by the qualifying patient's custodial parent or legal guardian;
 - p. An attestation that the information provided in the application is true and correct; and
 - q. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;
2. A current photograph of the:
 - a. Qualifying patient, and
 - b. Qualifying patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver;
 3. An attestation in a Department-provided format signed and dated by the qualifying patient's custodial parent or legal guardian that the qualifying patient's custodial parent or legal guardian has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 4. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
 - a. Allowing the qualifying patient's medical use of marijuana;
 - b. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - c. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 5. A copy of one of the following for the qualifying patient's custodial parent or legal guardian:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the qualifying patient's custodial parent or legal guardian U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient's custodial parent or legal guardian:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U. S. Certificate of Naturalization, or
 - iii. U. S. Certificate of Citizenship;

6. If the individual submitting the application on behalf of a qualifying patient is the qualifying patient's legal guardian, a copy of documentation establishing the individual as the qualifying patient's legal guardian;
7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The qualifying patient's custodial parent or legal guardian's fingerprints on a fingerprint card that includes:
 - i. The qualifying patient's custodial parent or legal guardian's first name; middle initial, if applicable; and last name;
 - ii. The qualifying patient's custodial parent or legal guardian's signature;
 - iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
 - iv. The qualifying patient's custodial parent's or legal guardian's address;
 - v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
 - vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
 - vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
 - viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
 - ix. The qualifying patient's custodial parent's or legal guardian's gender;
 - x. The qualifying patient's custodial parent's or legal guardian's race;
 - xi. The qualifying patient's custodial parent's or legal guardian's height;
 - xii. The qualifying patient's custodial parent's or legal guardian's weight;
 - xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
 - xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
 - xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or
 - b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (G)(7)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the qualifying patient's custodial parent or legal guardian as a result of the application;
8. A written certification from the physician in subsection (G)(1)(i) and a separate written certification from the physician in (G)(1)(j) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:

- a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
- b. The qualifying patient's name and date of birth;
- c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
- d. If the debilitating medical condition identified in subsection (G)(9)(c) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
- e. For the physician listed in subsection (G)(1)(i):
 - i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - ii. A statement, initialed by the physician, that the physician:
 - (1) Has established a medical record for the qualifying patient, and
 - (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
 - iv. The date the physician conducted the in-person physical examination of the qualifying patient;
 - v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - (1) Medical records, including medical records from other treating physicians from the previous 12 months,
 - (2) Response to conventional medications and medical therapies, and
 - (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and
 - vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:

- (1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
 - (2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
- f. For the physician listed in subsection (G)(1)(j), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;
 - g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
 - i. An attestation that the information provided in the written certification is true and correct; and
 - j. The physician's signature and the date the physician signed; and
9. The applicable fees in R9-17-102 for applying for a:
- a. Qualifying patient registry identification card, and
 - b. Designated caregiver registry identification card.
- H.** For purposes of this Article, "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from a specific location.
- I.** For purposes of this Article, "residence address" when used in conjunction with a qualifying patient means:
1. The street address including town or city and zip code assigned by a local jurisdiction; or
 2. For property that does not have a street address assigned by a local jurisdiction, the legal description of the property on the title documents recorded by the assessor of the county in which the property is located.

R9-17-203. Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card

- A.** To add a designated caregiver or to request a change of a qualifying patient's designated caregiver, the qualifying patient shall submit to the Department, within 10 working days after the addition or the change, the following:
1. An application in a Department-provided format that includes:
 - a. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 - b. If applicable, the name of the qualifying patient's current designated caregiver and the date the designated caregiver last provided or will last provide assistance to the qualifying patient;

- c. The name of the individual the qualifying patient is designating as caregiver; and
 - d. The signature of the qualifying patient and date the qualifying patient signed;
2. For the caregiver the qualifying patient is designating:
- a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The designated caregiver's date of birth;
 - c. The designated caregiver's residence address and mailing address;
 - d. The county where the designated caregiver resides;
 - e. The identifying number on the applicable card or document in subsection (A)(2)(i)(i) through (v);
 - f. One of the following:
 - i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - g. An attestation in a Department-provided format signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - h. A statement in a Department-provided format signed by the designated caregiver:
 - i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - i. A copy the designated caregiver's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the designated caregiver's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U. S. Certificate of Naturalization, or
 - (3) U. S. Certificate of Citizenship;
 - j. A current photograph of the designated caregiver; and
 - k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The designated caregiver's fingerprints on a fingerprint card that includes:
 - (1) The designated caregiver's first name; middle initial, if applicable; and last name;

- (2) The designated caregiver's signature;
 - (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - (4) The designated caregiver's address;
 - (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - (6) The designated caregiver's date of birth;
 - (7) The designated caregiver's Social Security number;
 - (8) The designated caregiver's citizenship status;
 - (9) The designated caregiver's gender;
 - (10) The designated caregiver's race;
 - (11) The designated caregiver's height;
 - (12) The designated caregiver's weight;
 - (13) The designated caregiver's hair color;
 - (14) The designated caregiver's eye color; and
 - (15) The designated caregiver's place of birth; or
- ii. If the designated caregiver's fingerprints and information required in subsection (A)(2)(k)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
3. The applicable fee in R9-17-102 for applying for a designated caregiver registry identification card.
- B.** To amend a qualifying patient's address on the qualifying patient's registry identification card when the qualifying patient or the qualifying patient's designated caregiver is authorized to cultivate marijuana, the qualifying patient shall submit to the Department, within 10 working days after the change in address, the following:
1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 2. The qualifying patient's new address;
 3. The county where the new address is located;
 4. The name of the qualifying patient's designated caregiver, if applicable;
 5. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 6. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the

qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;

7. The effective date of the qualifying patient's new address; and
 8. The applicable fee in R9-17-102 for applying to:
 - a. Amend a qualifying patient's registry identification card; and
 - b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.
- C. To request authorization to cultivate marijuana based on a qualifying patient's current address or a new address, the qualifying patient shall submit to the Department, if applicable within 10 working days after the change in address, the following:
1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 2. If the qualifying patient's address is a new address, the qualifying patient's:
 - a. Current address,
 - b. New address,
 - c. The county where the new address is located, and
 - d. The effective date of the qualifying patient's new address;
 3. The name of the qualifying patient's designated caregiver, if applicable;
 4. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 5. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use; and
 6. The applicable fee in R9-17-102 for applying to:
 - a. Amend a qualifying patient's registry identification card; and
 - b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.

R9-17-204. Renewing a Qualifying Patient's or Designated Caregiver's Registry Identification Card

- A. Except for a qualifying patient who is under 18 years of age, to renew a qualifying patient's registry identification card, the qualifying patient shall submit the following to the Department at least 30 calendar days before the expiration date of the qualifying patient's registry identification card:
1. An application in a Department-provided format that includes:
 - a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;

- b. The qualifying patient's date of birth;
 - c. Except as provided in subsection (A)(1)(j), the qualifying patient's residence address and mailing address;
 - d. The county where the qualifying patient resides;
 - e. The qualifying patient's e-mail address;
 - f. The registry identification number on the qualifying patient's current registry identification card;
 - g. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
 - h. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - i. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
 - j. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
 - k. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - l. An attestation that the information provided in the application is true and correct; and
 - m. The signature of the qualifying patient and the date the qualifying patient signed;
2. If the qualifying patient's name in subsection (A)(1)(a) is not the same name as on the qualifying patient's current registry identification card, one of the following with the qualifying patient's new name:
- a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the qualifying patient's U.S. passport;
3. A current photograph of the qualifying patient;
4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:
- a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and

- v. E-mail address;
- b. The qualifying patient's name and date of birth;
- c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
- d. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
- e. If the debilitating medical condition identified in subsection (A)(5)(d) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
- f. A statement, initialed by the physician, that the physician:
 - i. Has established a medical record for the qualifying patient, and
 - ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
- g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
- h. The date the physician conducted the in-person physical examination of the qualifying patient;
- i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - i. Medical records including medical records from other treating physicians from the previous 12 months,
 - ii. Response to conventional medications and medical therapies, and
 - iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
- j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
- k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
- l. A statement, initialed by the physician, that, if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
- m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:
 - i. The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and

- ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
 - n. An attestation that the information provided in the written certification is true and correct; and
 - o. The physician's signature and the date the physician signed;
6. If the qualifying patient is designating a caregiver or if the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card, the following in a Department-provided format:
- a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The designated caregiver's date of birth;
 - c. The designated caregiver's residence address and mailing address;
 - d. The county where the designated caregiver resides;
 - e. If the qualifying patient is renewing the designated caregiver's registry identification card, the registry identification number on the designated caregiver's registry identification card associated with the qualifying patient;
 - f. If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, the identification number on and a copy of the designated caregiver's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the designated caregiver's U. S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U. S. Certificate of Naturalization, or
 - (3) U. S. Certificate of Citizenship;
 - g. If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, one of the following:
 - i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - h. A current photograph of the designated caregiver;
 - i. An attestation signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;

- j. A statement in a Department-provided format signed by the designated caregiver:
 - i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and
- k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The designated caregiver's fingerprints on a fingerprint card that includes:
 - (1) The designated caregiver's first name; middle initial, if applicable; and last name;
 - (2) The designated caregiver's signature;
 - (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - (4) The designated caregiver's address;
 - (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - (6) The designated caregiver's date of birth;
 - (7) The designated caregiver's Social Security number;
 - (8) The designated caregiver's citizenship status;
 - (9) The designated caregiver's gender;
 - (10) The designated caregiver's race;
 - (11) The designated caregiver's height;
 - (12) The designated caregiver's weight;
 - (13) The designated caregiver's hair color;
 - (14) The designated caregiver's eye color; and
 - (15) The designated caregiver's place of birth; or
 - ii. If the designated caregiver's fingerprints and information required in subsection (A)(6)(k)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application;
- 7. If the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card and the designated caregiver's name in subsection (A)(6)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the designated caregiver's U.S. passport; and

8. The applicable fees in R9-17-102 for applying to:
 - a. Renew a qualifying patient's registry identification card; and
 - b. If applicable, issue or renew a designated caregiver's registry identification card.
- B.** To renew a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:
 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's:
 - i. First name; middle initial, if applicable; last name; and suffix, if applicable; and
 - ii. Date of birth;
 - b. The qualifying patient's residence address and mailing address;
 - c. The county where the qualifying patient resides;
 - d. The registry identification number on the qualifying patient's current registry identification card;
 - e. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - f. The qualifying patient's custodial parent's or legal guardian's residence address and mailing address;
 - g. The county where the qualifying patient's custodial parent or legal guardian resides;
 - h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
 - i. The registry identification number on the qualifying patient's custodial parent's or legal guardian's current registry identification card;
 - j. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;
 - k. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the qualifying patient's medical record maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;
 - l. Whether the qualifying patient's custodial parent or legal guardian is requesting approval for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - n. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
 - i. Allowing the qualifying patient's medical use of marijuana;

- ii. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - iii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - o. An attestation that the information provided in the application is true and correct; and
 - p. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;
2. If the qualifying patient's custodial parent's or legal guardian's name in subsection (B)(1)(e) is not the same name as on the qualifying patient's custodial parent's or legal guardian's current registry identification card, one of the following with the custodial parent's or legal guardian's new name:
- a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the qualifying patient's custodial parent's or legal guardian's U.S. passport;
3. A current photograph of the qualifying patient;
4. A written certification from the physician in subsection (B)(1)(j) and a separate written certification from the physician in subsection (B)(1)(k) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:
- a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - d. If the debilitating medical condition identified in subsection (B)(4)(c) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - e. For the physician listed in subsection (B)(1)(j):
 - i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - ii. A statement, initialed by the physician, that the physician:
 - (1) Has established a medical record for the qualifying patient, and
 - (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - iii. A statement, initialed by the physician, that the physician has conducted an in-person physical

- examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
- iv. The date the physician conducted the in-person physical examination of the qualifying patient;
 - v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - (1) Medical records including medical records from other treating physicians from the previous 12 months,
 - (2) Response to conventional medications and medical therapies, and
 - (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and
 - vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:
 - (1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
 - (2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
 - f. For the physician listed in subsection (B)(1)(k), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;
 - g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient's custodial parent or legal guardian any personal or professional relationship the physician has with the dispensary;
 - i. An attestation that the information provided in the written certification is true and correct; and
 - j. The physician's signature and the date the physician signed; and
- 5. A current photograph of the qualifying patient's custodial parent or legal guardian;
 - 6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The qualifying patient's custodial parent's or legal guardian's fingerprints on a fingerprint card that

includes:

- i. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; and last name;
 - ii. The qualifying patient's custodial parent's or legal guardian's signature;
 - iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
 - iv. The qualifying patient's custodial parent's or legal guardian's address;
 - v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
 - vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
 - vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
 - viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
 - ix. The qualifying patient's custodial parent's or legal guardian's gender;
 - x. The qualifying patient's custodial parent's or legal guardian's race;
 - xi. The qualifying patient's custodial parent's or legal guardian's height;
 - xii. The qualifying patient's custodial parent's or legal guardian's weight;
 - xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
 - xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
 - xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or
- b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (B)(6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver as a result of the application; and

7. The applicable fees in R9-17-102 for applying to renew a:

- a. Qualifying patient's registry identification card, and
- b. Designated caregiver's registry identification card.

C. Except as provided in subsection (A)(6), to renew a qualifying patient's designated caregiver's registry identification card, the qualifying patient shall submit to the Department, at least 30 calendar days before the expiration date of the designated caregiver's registry identification card, the following:

1. An application in a Department-provided format that includes:
 - a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;

- b. The registry identification number on the qualifying patient's current registry identification card;
 - c. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - d. The designated caregiver's date of birth;
 - e. The designated caregiver's residence address and mailing address;
 - f. The county where the designated caregiver resides;
 - g. The registry identification number on the designated caregiver's current registry identification card;
2. If the designated caregiver's name in subsection (C)(1)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the designated caregiver's U.S. passport;
 3. A current photograph of the designated caregiver;
 4. A statement in a Department-provided format signed by the designated caregiver:
 - a. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - b. Pledging not to divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and
 5. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The designated caregiver's fingerprints on a fingerprint card that includes:
 - i. The designated caregiver's first name; middle initial, if applicable; and last name;
 - ii. The designated caregiver's signature;
 - iii. If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - iv. The designated caregiver's address;
 - v. If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - vi. The designated caregiver's date of birth;
 - vii. The designated caregiver's Social Security number;
 - viii. The designated caregiver's citizenship status;
 - ix. The designated caregiver's gender;
 - x. The designated caregiver's race;
 - xi. The designated caregiver's height;
 - xii. The designated caregiver's weight;
 - xiii. The designated caregiver's hair color;

- xiv. The designated caregiver's eye color; and
 - xv. The designated caregiver's place of birth; or
 - b. If the designated caregiver's fingerprints and information required in subsection (C)(1)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
6. The applicable fee in R9-17-102 for renewing a designated caregiver's registry identification card.

R9-17-205. Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card

- A.** The Department shall deny a qualifying patient's application for or renewal of the qualifying patient's registry identification card if the qualifying patient does not have a debilitating medical condition.
- B.** The Department shall deny a designated caregiver's application for or renewal of the designated caregiver's registry identification card if the designated caregiver does not meet the definition of "designated caregiver" in A.R.S. § 36-2801.
- C.** The Department may deny a qualifying patient's or designated caregiver's application for or renewal of the qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver:
 - 1. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
 - 2. Provides false or misleading information to the Department.
- D.** The Department shall revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver diverts medical marijuana to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.
- E.** The Department shall revoke a designated caregiver's registry identification card if the designated caregiver has been convicted of an excluded felony offense.
- F.** The Department may revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- G.** If the Department denies or revokes a qualifying patient's registry identification card, the Department shall provide written notice to the qualifying patient that includes:
 - 1. The specific reason or reasons for the denial or revocation; and
 - 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- H.** If the Department denies or revokes a qualifying patient's designated caregiver's registry identification card,

the Department shall provide written notice to the qualifying patient and the designated caregiver that includes:

1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-301. Principal Officers and Board Members

A. For the purposes of this Chapter, in addition to the individual or individuals identified in the dispensary's by-laws or other organizational governing documents as principal officers of the dispensary, if applicable, the following individuals are considered principal officers:

1. If a corporation is applying for a dispensary registration certificate, two individuals who are officers of the corporation, including, but not limited to, the president or chief executive officer and those individuals serving in the positions of secretary and treasurer;
2. If a partnership is applying for a dispensary registration certificate, all individuals who are general partners and the principal officers of any entity general partner;
3. If a limited liability company is applying for a dispensary registration certificate, all managers of a manager-managed limited liability company, all members of a member-managed limited liability company, and the principal officers of an entity manager or member;
4. If an association or cooperative is applying for a dispensary registration certificate, the chief executive officer, executive director, or other comparable leader of the association or cooperative; and
5. If a business organization type other than those described in subsections (A)(1) through (4) is applying for a dispensary registration certificate, two individuals who occupy the top leadership positions of the business organization.

B. For purposes of this Chapter, in addition to the individual or individuals identified in the dispensary's by-laws or other organizational governing documents as board members of the dispensary, if applicable, the following individuals are considered board members:

1. If a corporation is applying for a dispensary registration certificate, the members of the board of directors of the corporation;
2. If a partnership is applying for a dispensary registration certificate, the partners who are not limited partners;
3. If a limited liability company is applying for a dispensary registration certificate, the principal officers of the limited liability company;
4. If an association or cooperative is applying for a dispensary registration certificate, the principal officers of the association or cooperative;
5. If a business organization type other than the types of business organizations in subsections (B)(1) through (4), the principal officers of the business organization.

R9-17-302. Repealed

R9-17-303. Dispensary Registration Certificate Allocation Process

- A. Each calendar year, the Department may review current valid dispensary registration certificates to determine if the Department may issue additional dispensary registration certificates pursuant to A.R.S. § 36-2804(C).
1. If the Department determines that the Department may issue additional dispensary registration certificates, the Department shall post, on the Department's website, the information that the Department is accepting dispensary registration certificate applications, including the deadline for accepting dispensary registration certificate applications.
 - a. The Department shall post the information in subsection (A)(1) at least 30 calendar days before the date the Department begins accepting applications.
 - b. The deadline for submission of dispensary registration certificate applications is 10 working days after the date the Department begins accepting applications.
 - c. Sixty working days after the date the Department begins accepting applications, the Department shall determine if the Department received more dispensary registration certificate applications that are complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue.
 - i. If the Department received more dispensary registration certificate applications than the Department is allowed to issue, the Department shall allocate any available dispensary registration certificates according to the priorities established in subsection (B).
 - ii. If the Department is allowed to issue a dispensary registration certificate for each dispensary registration certificate application the Department received, the Department shall allocate the dispensary registration certificates to those applicants.
 2. If the Department determines that the Department is not allowed to issue additional dispensary registration certificates, the Department shall, on the Department's website:
 - a. Post the information that the Department is not accepting dispensary registration certificate applications, and
 - b. Maintain the information until the next review.
- B. If the Department receives, by 60 working days after the date the Department begins accepting applications, more dispensary registration certificate applications that are complete and are in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue, the Department shall allocate the dispensary registration certificates according to the following criteria:
1. If dispensary registration certificate applications are received for a county that does not contain a dispensary:
 - a. If only one dispensary registration certificate application is received for a dispensary located in the county, the Department shall allocate the dispensary registration certificate to that applicant; or

- b. If more than one dispensary registration certificate application is received for a dispensary located in the county, the Department shall prioritize and allocate a dispensary registration certificate to an applicant according to subsection (B)(2);
2. For dispensary registration certificate applications received according to subsection (B)(1)(b), the Department shall prioritize and allocate a dispensary registration certificate to an applicant according to the following:
 - a. If only one dispensary registration certificate application is received for a dispensary located in a geographic area in the county that is at least 25 miles from another dispensary and from which another dispensary has moved, the Department shall allocate the dispensary registration certificate to that applicant;
 - b. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area in the county that is at least 25 miles from another dispensary and from which another dispensary has moved, the Department shall prioritize and allocate a dispensary registration certificate to an applicant based on which proposed dispensary location will provide dispensary services to the most qualifying patients within five miles of the proposed dispensary location, as determined from the number of registry identification cards issued to qualifying patients; and
 - c. If no dispensary registration certificate applications are received for a dispensary located in a geographic area in the county that meets the criteria in subsection (2)(a), the Department shall allocate a dispensary registration certificate in the county as follows:
 - i. If only one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary, the Department shall allocate the dispensary registration certificate to that applicant;
 - ii. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary, the Department shall allocate a dispensary registration certificate to an applicant based on random drawing; and
 - iii. If no dispensary registration certificate is allocated according to subsection (B)(2)(c)(i) or (ii), the Department shall allocate a dispensary registration certificate to an applicant for a dispensary located in the county based on random drawing;
3. If additional dispensary registration certificates are available after dispensary registration certificates are allocated for a county that does not contain a dispensary according to subsection (B)(1) or (2), the Department shall allocate the dispensary registration certificates as follows:
 - a. If only one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary and from which another dispensary has moved since the previous allocation of dispensary registration certificates, the Department shall allocate the dispensary registration certificate to that applicant; or

- b. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary and from which another dispensary has moved since the previous allocation of dispensary registration certificates, the Department shall prioritize and allocate dispensary registration certificates to applicants based on which proposed dispensary location will provide dispensary services to the most qualifying patients within five miles of the proposed dispensary location, as determined from the number of registry identification cards issued to qualifying patients;
4. If additional dispensary registration certificates are available after dispensary registration certificates are allocated according to subsections (B)(1), (2), and (3), the Department shall allocate the dispensary registration certificates as follows:
 - a. If only one dispensary registration certificate application is received for a dispensary located in a geographic area in which there are no other dispensaries operating within 25 miles of the geographic area, the Department shall allocate a dispensary registration certificate to that applicant; or
 - b. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area in which there are no other dispensaries operating within 25 miles of the geographic area, the Department shall allocate a dispensary registration certificate to an applicant based on random drawing; and
5. If additional dispensary registration certificates are available after dispensary registration certificates are allocated according to subsections (B)(1) through (4), for all dispensary registration certificate applications not allocated a dispensary registration certificate, the Department shall allocate a dispensary registration certificate to an applicant based on random drawing.
- C. If there is a tie or a margin of 0.1% or less in the scores generated by applying the criteria in subsection (B), the Department shall randomly select one dispensary registration certificate application and allocate a dispensary registration certificate to that applicant.
- D. For purposes of subsection (B):
 1. “Five miles” includes the area contained within a circle that extends for five miles in all directions from a specific location, not the distance travelled from the specific location by road; and
 2. “25 miles” includes the area contained within a circle that extends for 25 miles in all directions from the center of a geographic area, not the distance travelled from the center of the geographic area by road.
- E. If the Department does not allocate a dispensary registration certificate to an applicant that had submitted a dispensary registration certificate application that the Department determined was complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process, the Department shall:
 1. Provide a written notice to the applicant that states that, although the applicant’s dispensary registration certificate application was complete and complied with A.R.S. Title 36, Chapter 28.1 and this Chapter, the

Department did not allocate the applicant a dispensary registration certificate under the processes in this Section; and

2. Return \$1,000 of the application fee to the applicant.
- F. If the Department receives a dispensary registration certificate application at a time other than the time stated in subsection (B), the Department shall return the dispensary registration certificate application, including the application fee, to the applicant.

R9-17-304. Applying for a Dispensary Registration Certificate

- A. An individual shall not be an applicant, principal officer, or board member on:
1. More than one dispensary registration certificate application for a location in a single geographic area, or
 2. More than five dispensary registration certificate applications for locations in different geographic areas.
- B. If the Department determines that an individual is an applicant, principal officer, or board member on more than one dispensary registration certificate application for a geographic area or more than five dispensary registration certificate applications, the Department shall review the applications and provide the applicant on each of the dispensary registration certificate applications with a written comprehensive request for more information that includes the specific requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter that the dispensary registration certificate application does not comply with.
1. If an applicant withdraws an application to comply with this Chapter and submits information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall process the applicant's remaining dispensary registration certificate applications according to this Chapter.
 2. If an applicant does not withdraw an application or submit information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue a denial to the applicant according to R9-17-322.
 3. An application fee submitted with a dispensary registration certificate application in subsection (B) that is withdrawn is not refunded.
- C. To apply for a dispensary registration certificate, an applicant shall submit to the Department the following:
1. An application in a Department-provided format that includes:
 - a. The legal name of the proposed dispensary;
 - b. The physical address and geographic area of the proposed dispensary;
 - c. The following information for the applicant:
 - i. Name of the individual or entity applying,
 - ii. Type of business organization,
 - iii. Mailing address,
 - iv. Telephone number, and

- v. E-mail address;
 - d. The name of the individual designated to submit dispensary agent registry identification card applications on behalf of the proposed dispensary;
 - e. The name and professional license number of the proposed dispensary's medical director;
 - f. The name, residence address, and date of birth of each:
 - i. Principal officer, and
 - ii. Board member;
 - g. For each principal officer or board member, whether the principal officer or board member:
 - i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked;
 - ii. Is a physician currently providing written certifications for qualifying patients;
 - iii. Is a law enforcement officer; or
 - iv. Is employed by or a contractor of the Department;
 - h. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
 - i. A statement that, if the applicant is issued a dispensary registration certificate, the proposed dispensary will not operate until the proposed dispensary is inspected and obtains an approval to operate from the Department;
 - j. An attestation that the information provided to the Department to apply for a dispensary registration certificate is true and correct; and
 - k. The signatures of each principal officer and each board member of the proposed dispensary according to R9-17-301 and the date signed;
2. If the applicant is one of the business organizations in R9-17-301(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:
- a. The name of the business organization,
 - b. The type of business organization, and
 - c. The names and titles of the individuals in R9-17-301(A) and (B);
3. For each principal officer and each board member:
- a. An attestation signed and dated by the principal officer or board member that the principal officer or board member has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. For the Department's criminal records check authorized in A.R.S. §§ 36-2804 and 36-2804.05:
 - i. The principal officer's or board member's fingerprints on a fingerprint card that includes:
 - (1) The principal officer's or board member's first name; middle initial, if applicable; and last

- name;
- (2) The principal officer's or board member's signature;
 - (3) If different from the principal officer or board member, the signature of the individual physically rolling the principal officer's or board member's fingerprints;
 - (4) The principal officer's or board member's residence address;
 - (5) If applicable, the principal officer's or board member's surname before marriage and any names previously used by the principal officer or board member;
 - (6) The principal officer's or board member's date of birth;
 - (7) The principal officer's or board member's Social Security number;
 - (8) The principal officer's or board member's citizenship status;
 - (9) The principal officer's or board member's gender;
 - (10) The principal officer's or board member's race;
 - (11) The principal officer's or board member's height;
 - (12) The principal officer's or board member's weight;
 - (13) The principal officer's or board member's hair color;
 - (14) The principal officer's or board member's eye color; and
 - (15) The principal officer's or board member's place of birth; or
- ii. If the fingerprints and information required in subsection (C)(3)(b)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the principal officer or board member as a result of the application;
4. Policies and procedures that comply with the requirements in this Chapter for:
 - a. Inventory control,
 - b. Laboratory testing of medical marijuana and medical marijuana products,
 - c. Qualifying patient recordkeeping,
 - d. Security, and
 - e. Patient education and support;
 5. As required in A.R.S. § 36-2804(B)(1)(d), a sworn statement, signed and dated by each principal officer and each board member of the proposed dispensary according to R9-17-301, certifying that the proposed dispensary is in compliance with any local zoning restrictions;
 6. Documentation from the local jurisdiction where the proposed dispensary's physical address is located that:
 - a. There are no local zoning restrictions for the proposed dispensary's location, or
 - b. The proposed dispensary's location is in compliance with any local zoning restrictions;

7. Documentation of:
 - a. Ownership of the physical address of the proposed dispensary, or
 - b. Permission from the owner of the physical address of the proposed dispensary for the applicant for a dispensary registration certificate to operate a dispensary at the physical address;
 8. The proposed dispensary's by-laws including:
 - a. The names and titles of individuals designated as principal officers and board members of the proposed dispensary;
 - b. Whether the proposed dispensary plans to:
 - i. Cultivate marijuana;
 - ii. Acquire marijuana from qualifying patients, designated caregivers, or other dispensaries;
 - iii. Sell or provide marijuana to other dispensaries;
 - iv. Transport marijuana;
 - v. Prepare, sell, or dispense marijuana-infused edible food products;
 - vi. Prepare, sell, or dispense marijuana-infused non-edible products;
 - vii. Sell or provide marijuana paraphernalia or other supplies related to the administration of marijuana to qualifying patients and designated caregivers;
 - viii. Deliver medical marijuana to qualifying patients; or
 - ix. Provide patient support and related services to qualifying patients;
 - c. Provisions for the disposition of revenues and receipts to ensure that the proposed dispensary operates on a not-for-profit basis; and
 - d. Provisions for amending the proposed dispensary's by-laws;
 9. A business plan demonstrating the on-going viability of the proposed dispensary on a not-for-profit basis that includes:
 - a. A description and total dollar amount of expenditures already incurred to establish the proposed dispensary or to secure a dispensary registration certificate by the applicant for the dispensary registration certificate;
 - b. A description and total dollar amount of monies or tangible assets received for operating the proposed dispensary from entities other than the applicant for the dispensary registration certificate or a principal officer or board member associated with the applicant, including the entity's name and the interest in the dispensary or the benefit the entity obtained;
 - c. Projected expenditures expected before the proposed dispensary is operational;
 - d. Projected expenditures after the dispensary is operational; and
 - e. Projected revenue; and
 10. The applicable fee in R9-17-102 for applying for a dispensary registration certificate.
- D.** Before an entity with a dispensary registration certificate begins operating a dispensary, the entity shall apply

for and obtain an approval to operate a dispensary from the Department.

R9-17-305. Applying for Approval to Operate a Dispensary

- A.** To apply for approval to operate a dispensary, a person holding a dispensary registration certificate shall submit to the Department, and, if the dispensary registration certificate was issued on or after April 1, 2020, within 18 months after the dispensary registration certificate was issued, the following:
1. An application in a Department-provided format that includes:
 - a. The name and registry identification number of the dispensary;
 - b. The physical address of the dispensary;
 - c. The name, address, and date of birth of each dispensary agent;
 - d. Except as provided in R9-17-324, the name and professional license number of the dispensary's medical director;
 - e. If applicable, the physical address of the dispensary's cultivation site;
 - f. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
 - g. The dispensary's proposed hours of operation during which the dispensary plans to be available to dispense medical marijuana to qualifying patients and designated caregivers;
 - h. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
 - i. Whether the dispensary and, if applicable, the dispensary's cultivation site are ready for an inspection by the Department;
 - j. If the dispensary and, if applicable, the dispensary's cultivation site are not ready for an inspection by the Department, the date the dispensary and, if applicable, the dispensary's cultivation site will be ready for an inspection by the Department;
 - k. An attestation that the information provided to the Department to apply for approval to operate a dispensary is true and correct; and
 - l. The signatures of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;
 2. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the building as a dispensary and, if applicable, as the dispensary's cultivation site, such as a certificate of occupancy, a special use permit, or a conditional use permit;
 3. A sworn statement, signed and dated by each principal officer and each board member of the dispensary according to R9-17-301, certifying that the dispensary is in compliance with local zoning restrictions;
 4. The distance to the closest private school or public school from:
 - a. The dispensary; and
 - b. If applicable, the dispensary's cultivation site;

5. A site plan drawn to scale of the dispensary location showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;
 6. A floor plan drawn to scale of the building where the dispensary is located showing the:
 - a. Layout and dimensions of each room,
 - b. Name and function of each room,
 - c. Location of each hand washing sink,
 - d. Location of each toilet room,
 - e. Means of egress,
 - f. Location of each video camera,
 - g. Location of each panic button, and
 - h. Location of natural and artificial lighting sources;
 7. If applicable, a site plan drawn to scale of the dispensary's cultivation site showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
 8. If applicable, a floor plan drawn to scale of each building at the dispensary's cultivation site showing the:
 - a. Layout and dimensions of each room,
 - b. Name and function of each room,
 - c. Location of each hand washing sink,
 - d. Location of each toilet room,
 - e. Means of egress,
 - f. Location of each video camera,
 - g. Location of each panic button, and
 - h. Location of natural and artificial lighting sources.
- B.** A dispensary's cultivation site may be located anywhere in the state where a cultivation site is allowed by the local jurisdiction.

R9-17-306. Changes to a Dispensary Registration Certificate

- A.** A dispensary may not transfer or assign the dispensary registration certificate.
- B.** A dispensary may change the location of the:
1. Dispensary:
 - a. If the dispensary was allocated a dispensary registration certificate on or after April 1, 2020, according to A.R.S. § 36-2803.01(D); and
 - b. If the dispensary was allocated a dispensary registration certificate before April 1, 2020:
 - i. Within the first three years after the Department issued the dispensary's registration certificate, to

- another location in the geographic area where the dispensary is located; or
 - ii. After the first three years after the Department issued a dispensary registration certificate to the dispensary, to another location in the state; or
2. Dispensary's cultivation site to another location in the state.
- C. A dispensary or the dispensary's cultivation site shall not cultivate, manufacture, distribute, dispense, or sell medical marijuana at a new location until the dispensary submits an application for a change in a dispensary location or a change or addition of a cultivation site in R9-17-307 and the Department issues an amended dispensary registration certificate or an approval for the dispensary's cultivation site's new location to the dispensary.

R9-17-307. Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site

- A. To change the location of a dispensary or the dispensary's cultivation site or to add a cultivation site, the dispensary shall submit an application to the Department that includes:
- 1. The following information in a Department-provided format:
 - a. The legal name of the dispensary;
 - b. The registry identification number for the dispensary;
 - c. Whether the request is for:
 - i. A change of location for the dispensary,
 - ii. A change of location for the dispensary's cultivation site, or
 - iii. An addition of a cultivation site;
 - d. The current physical address of the dispensary or the dispensary's cultivation site;
 - e. The physical address of the proposed location for the dispensary or the dispensary's cultivation site;
 - f. The distance to the closest public school or private school from:
 - i. The proposed location for the dispensary, or
 - ii. The proposed location for the dispensary's cultivation site;
 - g. The name of the entity applying;
 - h. If applicable, the anticipated date of the change of location;
 - i. Whether the proposed dispensary or the dispensary's proposed cultivation site is ready for an inspection by the Department;
 - j. If the proposed dispensary or the dispensary's proposed cultivation site is not ready for an inspection by the Department, the date the dispensary or the dispensary's cultivation site will be ready for an inspection by the Department;
 - k. An attestation that the information provided to the Department to apply for a change in location is true and correct; and

1. The signature of each principal officer and board member of the dispensary according to R9-17-301 and the date signed;
2. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the proposed building as a dispensary or location as the dispensary's cultivation site, such as a certificate of occupancy, a special use permit, or a conditional use permit;
3. A sworn statement, signed by each principal officer and board member of the dispensary according to R9-17-301, certifying that the location of the proposed dispensary building or of the dispensary's proposed cultivation site is in compliance with local zoning restrictions;
4. If the change in location is for the dispensary:
 - a. A site plan drawn to scale of the proposed dispensary location showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
 - b. A floor plan drawn to scale of the building where the proposed dispensary is located showing the:
 - i. Layout and dimensions of each room,
 - ii. Name and function of each room,
 - iii. Location of each hand washing sink,
 - iv. Location of each toilet room,
 - v. Means of egress,
 - vi. Location of each video camera,
 - vii. Location of each panic button, and
 - viii. Location of natural and artificial lighting sources;
5. If the change in location is for the dispensary's cultivation site or if adding a cultivation site:
 - a. A site plan drawn to scale of the dispensary's proposed cultivation site showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
 - b. If applicable, a floor plan drawn to scale of each building used by the dispensary's proposed cultivation site showing the:
 - i. Layout and dimensions of each room,
 - ii. Name and function of each room,
 - iii. Location of each hand washing sink,
 - iv. Location of each toilet room,
 - v. Means of egress,
 - vi. Location of each video camera,
 - vii. Location of each panic button, and
 - viii. Location of natural and artificial lighting sources; and

6. The applicable fee in R9-17-102 for applying for a change in location or the addition of a cultivation site.
- B.** If the information and documents submitted by the dispensary comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue an amended dispensary registration certificate that includes the new address of the new location and retains the expiration date of the previously issued dispensary registration certificate.
- C.** An application for a change in location of a dispensary or a dispensary's cultivation site or the addition of a cultivation site may not be combined with an application for renewing a dispensary registration certificate. The Department shall process each application separately according to the applicable time-frame established in R9-17-107.
- D.** A dispensary shall submit written notification to the Department when the dispensary no longer uses a previously approved cultivation site.

R9-17-308. Renewing a Dispensary Registration Certificate

To renew a dispensary registration certificate, a dispensary that has an approval to operate a dispensary issued by the Department, shall submit to the Department, at least 30 calendar days before the expiration date of the dispensary's current dispensary registration certificate, the following:

1. An application in a Department-provided format that includes:
 - a. The legal name of the dispensary;
 - b. The registry identification number for the dispensary;
 - c. If the dispensary is a dual licensee, the marijuana establishment license number;
 - d. The physical address of the dispensary;
 - e. The name of the entity applying;
 - f. Except as provided in R9-17-324(D), the name and license number of the dispensary's medical director;
 - g. The dispensary's hours of operation during which the dispensary is available to dispense medical marijuana to qualifying patients and designated caregivers;
 - h. The name, address, date of birth, and registry identification number of each:
 - i. Principal officer,
 - ii. Board member, and
 - iii. Dispensary agent;
 - i. For each principal officer or board member, whether the principal officer or board member:
 - i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked,
 - ii. Is a physician currently providing written certifications for qualifying patients,
 - iii. Is a law enforcement officer, or

- iv. Is employed by or a contractor of the Department;
 - j. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
 - k. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
 - l. An attestation that the information provided to the Department to renew the dispensary registration certificate is true and correct; and
 - m. The signature of each principal officer and board member of the dispensary according to R9-17-301 and the date signed;
2. If the application is for renewing a dispensary registration certificate that was initially issued within the previous 12 months, a copy of the dispensary's approval to operate a dispensary issued by the Department;
 3. Unless the dispensary is a dual licensee and provided a valid marijuana establishment license number according to subsection (1)(c):
 - a. A copy of an annual financial statement for the previous two years, or for the portion of the previous two years the dispensary was operational, prepared according to generally accepted accounting principles; and
 - b. A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (3)(a); and
 4. The applicable fee in R9-17-102 for applying to renew a dispensary registration certificate.

R9-17-309. Inspections

- A.** Submission of an application for a dispensary registration certificate constitutes permission for entry to and inspection of the dispensary and, if applicable, the dispensary's cultivation site.
- B.** Except as provided in subsection (D), an onsite inspection of a dispensary or the dispensary's cultivation site shall occur at a date and time agreed to by the dispensary and the Department that is no later than five working days after the date the Department submits a written request to the dispensary to schedule the certification or compliance inspection, unless the Department agrees to a later date and time.
- C.** The Department shall not accept allegations of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.
- D.** If the Department receives an allegation of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the dispensary or the dispensary's cultivation site.
- E.** If the Department identifies a violation of A.R.S. Title 36, Chapter 28.1 or this Chapter during an inspection of a dispensary or the dispensary's cultivation site:
 1. The Department shall provide the dispensary with a written notice that includes the specific rule or statute

that was violated; and

2. The dispensary shall notify the Department in writing, with a postmark date within 20 working days after the date of the notice of violations, identifying the corrective actions taken and the date of the correction.

R9-17-310. Administration

A. A dispensary shall:

1. Ensure that the dispensary is operating and available to dispense medical marijuana and marijuana products to qualifying patients and designated caregivers:
 - a. At least 30 hours weekly between the hours of 7:00 a.m. and 10:00 p.m.; and
 - b. For a dispensary with a dispensary registration certificate issued on or after April 1, 2020, within 18 months after receiving the dispensary registration certificate;
2. Develop, document, and implement policies and procedures regarding:
 - a. Job descriptions and employment contracts, including:
 - i. Personnel duties, authority, responsibilities, and qualifications;
 - ii. Personnel supervision;
 - iii. Training in and adherence to confidentiality requirements;
 - iv. Periodic performance evaluations; and
 - v. Disciplinary actions;
 - b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
 - c. Inventory control, including:
 - i. Tracking;
 - ii. Packaging;
 - iii. Accepting marijuana from qualifying patients and designated caregivers;
 - iv. Acquiring marijuana or marijuana products from other dispensaries;
 - v. Providing marijuana or marijuana products to another dispensary; and
 - vi. Either:
 - (1) Providing samples of marijuana or marijuana products to a laboratory for testing, or
 - (2) Allowing a laboratory agent access to medical marijuana or marijuana product to collect samples;
 - d. Laboratory testing, including:
 - i. The analytes, including possible contaminants, to be tested for;
 - ii. The process for separating a batch of marijuana or of a marijuana product until laboratory testing has been completed and testing results received by the dispensary;

- iii. The process for collecting samples of medical marijuana or a marijuana product for laboratory testing, including:
 - (1) The amount to be collected from each batch,
 - (2) The method for ensuring that a sample collected is representative of the batch,
 - (3) The packaging of the sample,
 - (4) The method for documenting chain of custody for the sample, and
 - (5) Methods to deter tampering with the sample and to determine whether tampering has occurred;
- vi. The process for submitting a sample of medical marijuana or a marijuana product to a laboratory agent or laboratory for testing;
- v. The process for requesting retesting of the remaining portion of a sample of medical marijuana or a marijuana product; and
- vi. Actions to be taken on the basis of laboratory testing results;
- e. Remediation, including:
 - i. Criteria for when a batch of medical marijuana or marijuana product can be remediated;
 - ii. The process by which each type of medical marijuana or marijuana product is remediated, including the methods for remediation and subsequent retesting; and
 - iii. Documentation of the remediation process;
- f. Disposal of medical marijuana or a marijuana product, including:
 - i. Destroying a batch of marijuana or a marijuana product that does not meet the requirements in Table 3.1 and documenting the destruction;
 - ii. Submitting marijuana that is not usable marijuana to a local law enforcement agency and documenting the submission; or
 - iii. Otherwise disposing of marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting the method of disposal, the laboratory agent overseeing the disposal, and the date of disposal;
- g. Qualifying patient records, including purchases, denials of sale, any delivery options, confidentiality, and retention; and
- h. Patient education and support, including the development and distribution of materials on:
 - i. Availability of different strains of marijuana and the purported effects of the different strains;
 - ii. Information about the purported effectiveness of various methods, forms, and routes of medical marijuana administration;
 - iii. Information about laboratory testing, the analytes for which the dispensary receives testing results, the right to receive a copy of the final report of testing specified in R9-17-404.06 upon request, and how to read and understand the final report of testing;

- iv. Methods of tracking the effects on a qualifying patient of different strains and forms of marijuana; and
 - v. Prohibition on the smoking of medical marijuana in public places;
3. Maintain copies of the policies and procedures at the dispensary and provide copies to the Department for review upon request;
 4. Review dispensary policies and procedures at least once every 12 months from the issue date of the dispensary registration certificate and update as needed;
 5. Except as provided in R9-17-324(D), employ or contract with a medical director;
 6. Except as provided in R9-17-324(C), ensure that each dispensary agent has the dispensary agent's registry identification card in the dispensary agent's immediate possession when the dispensary agent is:
 - a. Working or providing volunteer services at the dispensary or the dispensary's cultivation site, or
 - b. Transporting marijuana for the dispensary;
 7. Except as provided in R9-17-324(C), ensure that a dispensary agent accompanies any individual other than another dispensary agent associated with the dispensary when the individual is present in the enclosed, locked facility where marijuana is cultivated by the dispensary;
 8. Except as provided in R9-17-324(C), not allow an individual who does not possess a dispensary agent registry identification card issued under the dispensary registration certificate to:
 - a. Serve as a principal officer or board member for the dispensary,
 - b. Serve as the medical director for the dispensary,
 - c. Be employed by the dispensary, or
 - d. Provide volunteer services at or on behalf of the dispensary;
 9. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a dispensary agent no longer:
 - a. Serves as a principal officer or board member for the dispensary,
 - b. Serves as the medical director for the dispensary,
 - c. Is employed by the dispensary, or
 - d. Provides volunteer services at or on behalf of the dispensary;
 10. Document and report any loss or theft of marijuana from the dispensary to the appropriate law enforcement agency;
 11. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request;
 12. Post the following information in a place that can be viewed by individuals entering the dispensary:
 - a. If applicable, the dispensary's approval to operate;
 - b. The dispensary's registration certificate;
 - c. Except as provided in R9-17-324(D), the name of the dispensary's medical director and the medical

director's professional license number on a sign at least 20 centimeters by 30 centimeters;

- d. The hours of operation during which the dispensary will dispense medical marijuana to a qualifying patient or a designated caregiver;
- e. A sign in a Department-provided format that contains the following language:
 - i. "WARNING: There may be potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding," and
 - ii. "WARNING: Use of marijuana during pregnancy may result in a risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;" and
 - iii. A sign stating that a qualifying patient has the right to receive the results of laboratory testing of medical marijuana or a marijuana product; and

13. Except as provided in R9-17-324(D):

- a. Not lend any part of the dispensary's income or property without receiving adequate security and a reasonable rate of interest,
- b. Not purchase property for more than adequate consideration in money or cash equivalent,
- c. Not pay compensation for salaries or other compensation for personal services that is in excess of a reasonable allowance,
- d. Not sell any part of the dispensary's property or equipment for less than adequate consideration in money or cash equivalent, and
- e. Not engage in any other transaction that results in a substantial diversion of the dispensary's income or property.

B. If a dispensary cultivates marijuana, the dispensary shall cultivate the marijuana in an enclosed, locked facility.

R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card

Except as provided in R9-17-107(F) or R9-17-324(C), to obtain a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary, the dispensary shall submit to the Department the following for each individual:

- 1. An application in a Department-provided format that includes:
 - a. The individual's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The individual's residence address and mailing address;
 - c. The county where the individual resides;
 - d. The individual's date of birth;
 - e. The identifying number on the applicable card or document in subsection (5)(a) through (e);

- f. The name and registry identification number of the dispensary; and
 - g. The signature of the individual in R9-17-304(C)(1)(d) or of a principal officer or board member, as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date signed;
2. An attestation signed and dated by the individual that the individual has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 3. One of the following:
 - a. A statement that the individual does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the individual for each valid registry identification card currently held by the individual;
 4. A statement in a Department-provided format signed by the individual pledging not to divert marijuana to any other individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 5. A copy of the individual's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the individual's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the individual:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
 6. A current photograph of the individual;
 7. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.05:
 - a. The individual's fingerprints on a fingerprint card that includes:
 - i. The individual's first name; middle initial, if applicable; and last name;
 - ii. The individual's signature;
 - iii. If different from the individual, the signature of another individual physically rolling the individual's fingerprints;
 - iv. The individual's address;
 - v. If applicable, the individual's surname before marriage and any names previously used by the individual;
 - vi. The individual's date of birth;
 - vii. The individual's Social Security number;

- viii. The individual's citizenship status;
 - ix. The individual's gender;
 - x. The individual's race;
 - xi. The individual's height;
 - xii. The individual's weight;
 - xiii. The individual's hair color;
 - xiv. The individual's eye color; and
 - xv. The individual's place of birth; or
- b. If the individual's fingerprints and information required in subsection (7)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card for another dispensary, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the individual as a result of the application; and
8. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.

R9-17-312. Submitting an Application to Renew a Dispensary Agent's Registry Identification Card

To renew a dispensary agent's registry identification card, a dispensary shall submit to the Department, at least 30 calendar days before the expiration of the dispensary agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
 - a. The dispensary agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The dispensary agent's residence address and mailing address;
 - c. The county where the dispensary agent resides;
 - d. The dispensary agent's date of birth;
 - e. The registry identification number on the dispensary agent's current registry identification card;
 - f. The name and registry identification number of the dispensary; and
 - g. The signature of the individual in R9-17-304(C)(1)(d) or of a principal officer or board member, as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date signed;
2. An attestation signed and dated by the dispensary agent that the dispensary agent has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
3. If the dispensary agent's name in subsection (1)(a) is not the same name as on the dispensary agent's current registry identification card, one of the following with the dispensary agent's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the dispensary agent's U.S. passport;

4. A statement in a Department-provided format signed by the dispensary agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A current photograph of the dispensary agent;
6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The dispensary agent's fingerprints on a fingerprint card that includes:
 - i. The dispensary agent's first name; middle initial, if applicable; and last name;
 - ii. The dispensary agent's signature;
 - iii. If different from the dispensary agent, the signature of the individual physically rolling the dispensary agent's fingerprints;
 - iv. The dispensary agent's address;
 - v. If applicable, the dispensary agent's surname before marriage and any names previously used by the dispensary agent;
 - vi. The dispensary agent's date of birth;
 - vii. The dispensary agent's Social Security number;
 - viii. The dispensary agent's citizenship status;
 - ix. The dispensary agent's gender;
 - x. The dispensary agent's race;
 - xi. The dispensary agent's height;
 - xii. The dispensary agent's weight;
 - xiii. The dispensary agent's hair color;
 - xiv. The dispensary agent's eye color; and
 - xv. The dispensary agent's place of birth; or
 - b. If the dispensary agent's fingerprints and information required in subsection (6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card for another dispensary, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the dispensary agent as a result of the application; and
7. The applicable fee in R9-17-102 for applying to renew a dispensary agent's registry identification card.

R9-17-313. Medical Director

- A.** Except as provided in R9-17-324(D), a dispensary shall appoint an individual who is a physician to function as a medical director.
- B.** During a dispensary's hours of operation, a medical director or an individual who is a physician and is designated by the medical director to serve as medical director in the medical director's absence is:

1. Onsite; or
 2. Able to be contacted by any means possible, such as by telephone or pager.
- C. A medical director shall:
1. Develop and provide training to the dispensary's dispensary agents at least once every 12 months from the initial date of the dispensary's registration certificate on the following subjects:
 - a. Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;
 - b. Guidelines for providing support to qualifying patients related to the qualifying patient's self-assessment of the qualifying patient's symptoms, including a rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, and agitation;
 - c. Recognizing signs and symptoms of substance abuse; and
 - d. Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and
 2. Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary.
- D. A medical director shall provide oversight for the development and dissemination of:
1. Educational materials for qualifying patients and designated caregivers that include:
 - a. Alternative medical options for the qualifying patient's debilitating medical condition;
 - b. Information about possible side effects of and contraindications for medical marijuana including possible impairment with use and operation of a motor vehicle or heavy machinery, when caring for children, or of job performance;
 - c. Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;
 - d. A description of the potential for differing strengths of medical marijuana strains and products;
 - e. Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, non-prescription drugs, and supplements;
 - f. Techniques for the use of medical marijuana and marijuana paraphernalia;
 - g. Information about different methods, forms, and routes of medical marijuana administration;
 - h. Signs and symptoms of substance abuse, including tolerance, dependency, and withdrawal; and
 - i. A listing of substance abuse programs and referral information;
 2. A system for a qualifying patient or the qualifying patient's designated caregiver to document the qualifying patient's pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, or agitation that includes:
 - a. A log book, maintained by the qualifying patient and or the qualifying patient's designated caregiver, in which the qualifying patient or the qualifying patient's designated caregiver may track the use and

- effects of specific medical marijuana strains and products;
 - b. A rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscles spasms, and agitation;
 - c. Guidelines for the qualifying patient's self-assessment or, if applicable, assessment of the qualifying patient by the qualifying patient's designated caregiver; and
 - d. Guidelines for reporting usage and symptoms to the physician providing the written certification for medical marijuana and any other treating physicians; and
3. Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana.
- E. A medical director for a dispensary shall not provide a written certification for medical marijuana for any qualifying patient.

R9-17-314. Dispensing Medical Marijuana

- A. Before a dispensary agent dispenses medical marijuana or a marijuana product to a qualifying patient or a designated caregiver, the dispensary agent shall:
- 1. Verify the qualifying patient's or the designated caregiver's identity,
 - 2. Offer any appropriate patient education or support materials,
 - 3. Make available the results of testing of the medical marijuana or marijuana product required in R9-17-317.01(A), if requested by the qualifying patient or designated caregiver;
 - 4. Enter the qualifying patient's or designated caregiver's registry identification number on the qualifying patient's or designated caregiver's registry identification card into the medical marijuana electronic verification system,
 - 5. Verify the validity of the qualifying patient's or designated caregiver's registry identification card,
 - 6. Verify that the amount of medical marijuana or marijuana product the qualifying patient or designated caregiver is requesting would not cause the qualifying patient to exceed the limit on obtaining no more than two and one-half ounces of medical marijuana during any 14-calendar-day period, and
 - 7. Enter the following information into the medical marijuana electronic verification system for the qualifying patient or designated caregiver:
 - a. The amount of medical marijuana dispensed,
 - b. Whether the medical marijuana was dispensed to the qualifying patient or to the qualifying patient's designated caregiver,
 - c. The date and time the medical marijuana was dispensed,
 - d. The dispensary agent's registry identification number, and
 - e. The dispensary's registry identification number.

- B.** A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is dispensed in a container made of material that will not react with or leach into the medical marijuana or marijuana product.

R9-17-315. Qualifying Patient Records

- A.** A dispensary shall ensure that:

1. A qualifying patient record is established and maintained for each qualifying patient who obtains medical marijuana or a marijuana product from the dispensary;
2. An entry in a qualifying patient record:
 - a. Is recorded only by a dispensary agent authorized by dispensary policies and procedures to make an entry,
 - b. Is dated and signed by the dispensary agent,
 - c. Includes the dispensary agent's registry identification number, and
 - d. Is not changed to make the initial entry illegible;
3. If an electronic signature is used to sign an entry, the dispensary agent whose signature the electronic code represents is accountable for the use of the electronic signature;
4. A qualifying patient record is only accessed by a dispensary agent authorized by dispensary policies and procedures to access the qualifying patient record;
5. A qualifying patient record is provided to the Department for review upon request;
6. A qualifying patient record is protected from loss, damage, or unauthorized use; and
7. A qualifying patient record is maintained for five years after the date of the qualifying patient's or, if applicable, the qualifying patient's designated caregiver's last request for medical marijuana from the dispensary.

- B.** If a dispensary maintains qualifying patient records electronically, the dispensary shall ensure that:

1. There are safeguards to prevent unauthorized access, and
2. The date and time of an entry in a qualifying patient record is recorded electronically by an internal clock.

- C.** A dispensary shall ensure that the qualifying patient record for a qualifying patient who requests or whose designated caregiver on behalf of the qualifying patient requests medical marijuana or a marijuana product from the dispensary contains:

1. Qualifying patient information that includes:
 - a. The qualifying patient's name;
 - b. The qualifying patient's date of birth; and
 - c. The name of the qualifying patient's designated caregiver, if applicable;
2. Documentation of any patient education and support materials provided to the qualifying patient or the qualifying patient's designated caregiver, including a description of the materials and the date the

materials were provided; and

3. For each time the qualifying patient requests and does not obtain medical marijuana or a marijuana product or, if applicable, the designated caregiver requests on behalf of the qualifying patient and does not obtain medical marijuana or a marijuana product from the dispensary, the following:
 - a. The date,
 - b. The name and registry identification number of the individual who requested the medical marijuana or marijuana product, and
 - c. The dispensary's reason for refusing to provide the medical marijuana or marijuana product.

R9-17-316. Inventory Control System

- A. A dispensary shall designate in writing a dispensary agent who has oversight of the dispensary's medical marijuana inventory control system.
- B. A dispensary shall only acquire marijuana from:
 1. The dispensary's cultivation site,
 2. Another dispensary or another dispensary's cultivation site,
 3. A qualifying patient authorized by the Department to cultivate marijuana, or
 4. A designated caregiver authorized by the Department to cultivate marijuana.
- C. A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana and marijuana products that documents:
 1. The following amounts:
 - a. Each day's beginning inventory of medical marijuana and marijuana products,
 - b. Acquisitions according to subsection (B),
 - c. Medical marijuana harvested by the dispensary,
 - d. Medical marijuana and marijuana products provided to another dispensary,
 - e. Medical marijuana and marijuana products dispensed to a qualifying patient or designated caregiver,
 - f. Medical marijuana and marijuana products submitted to a laboratory for testing according to R9-17-317.01,
 - g. Medical marijuana or marijuana products that were disposed of, and
 - h. The day's ending medical marijuana and marijuana products inventory;
 2. For acquiring medical marijuana from a qualifying patient or designated caregiver:
 - a. A description of the medical marijuana acquired including the amount and strain,
 - b. The name and registry identification number of the qualifying patient or designated caregiver who provided the medical marijuana,
 - c. The name and registry identification number of the dispensary agent receiving the medical marijuana on behalf of the dispensary, and

- d. The date of acquisition;
3. For acquiring medical marijuana or a marijuana product from another dispensary:
 - a. A description of the medical marijuana or marijuana product acquired including:
 - i. The amount, batch number, and strain of the medical marijuana or marijuana product;
 - ii. For a marijuana product, the ingredients in order of abundance; and
 - iii. For an edible marijuana product infused with medical marijuana or a marijuana product:
 - (1) The date of manufacture,
 - (2) The total weight of the edible marijuana product, and
 - (3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible marijuana product;
 - b. The name and registry identification number of the dispensary providing the medical marijuana or marijuana product;
 - c. The name and registry identification number of the dispensary agent providing the medical marijuana or marijuana product;
 - d. The name and registry identification number of the dispensary agent receiving the medical marijuana or marijuana product on behalf of the dispensary; and
 - e. The date of acquisition;
4. For each batch of marijuana cultivated:
 - a. The batch number;
 - b. Whether the batch originated from marijuana seeds or marijuana cuttings;
 - c. The origin and strain of the marijuana seeds or marijuana cuttings planted;
 - d. The number of marijuana seeds or marijuana cuttings planted;
 - e. The date the marijuana seeds or cuttings were planted;
 - f. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers used in the cultivation;
 - g. The number of plants grown to maturity; and
 - h. Harvest information including:
 - i. Date of harvest,
 - ii. Final processed usable marijuana yield weight, and
 - iii. Name and registry identification number of the dispensary agent responsible for the harvest;
5. For providing medical marijuana or a marijuana product to another dispensary:
 - a. A description of the medical marijuana or marijuana product provided including:
 - i. The amount, batch number, and strain of the medical marijuana or marijuana product;
 - ii. For a marijuana product, the ingredients in order of abundance; and
 - iii. For an edible marijuana product infused with medical marijuana or a marijuana product:

- (1) The date of manufacture,
 - (2) The total weight of the edible marijuana product, and
 - (3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible marijuana product;
 - b. The name and registry identification number of the other dispensary;
 - c. The name and registry identification number of the dispensary agent who received the medical marijuana or marijuana product on behalf of the other dispensary; and
 - d. The date the medical marijuana or marijuana product was provided;
6. For submitting marijuana or marijuana products to a laboratory agent or laboratory for testing:
- a. The amount, strain, and batch number of the marijuana or marijuana product submitted;
 - b. The name and registry identification number of the laboratory;
 - c. The name and registry identification number of the laboratory agent who received the marijuana or marijuana product on behalf of the laboratory; and
 - d. The date the marijuana or marijuana product was submitted to the laboratory; and
7. For disposal of medical marijuana or a marijuana product that is not to be dispensed or used for making a marijuana product:
- a. Description of and reason for the medical marijuana or marijuana product being disposed of including, if applicable:
 - i. The number of failed or other unusable plants, and
 - ii. The results of laboratory testing;
 - b. Date of disposal;
 - c. Method of disposal; and
 - d. Name and registry identification number of the dispensary agent responsible for the disposal.
- D.** The individual designated in subsection (A) shall conduct and document an audit of the dispensary's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
1. If the audit identifies a reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory not due to documented causes, the dispensary shall determine and document where the loss has occurred and take and document corrective action.
 2. If the reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory is due to suspected criminal activity by a dispensary agent, the dispensary shall report the dispensary agent to the Department and to the local law enforcement authorities.
- E.** A dispensary shall:
1. Maintain the documentation required in subsections (C) and (D) at the dispensary for at least five years after the date on the document, and

2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

R9-17-317. Product Labeling

- A.** A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is labeled with:
1. The dispensary’s registry identification number;
 2. The amount, strain, and batch number of the medical marijuana or marijuana product;
 3. The form of the medical marijuana or marijuana product;
 4. As applicable, the weight of the medical marijuana or marijuana product;
 5. In compliance with Table 3.1, the potency of the medical marijuana or marijuana product, based on laboratory testing results, including the number of milligrams per designated unit or percentage of:
 - a. Total tetrahydrocannabinol, reported according to R9-17-404.03(S)(2)(a);
 - b. Total cannabidiol, reported according to R9-17-404.03(S)(2)(b); and
 - c. Any other cannabinoid for which the dispensary is making a claim related to the effect of the cannabinoid on the human body;
 6. The following statement: “ARIZONA DEPARTMENT OF HEALTH SERVICES’ WARNING: Marijuana use can be addictive and can impair an individual’s ability to drive a motor vehicle or operate heavy machinery. Marijuana smoke contains carcinogens and can lead to an increased risk for cancer, tachycardia, hypertension, heart attack, and lung infection. KEEP OUT OF REACH OF CHILDREN”;
 7. If not cultivated by the dispensary, whether the medical marijuana was obtained from a qualifying patient, a designated caregiver, or another dispensary;
 8. If not infused or prepared for sale by the dispensary, whether the marijuana product was obtained from another dispensary;
 9. For a marijuana product:
 - a. The ingredients in order of abundance; and
 - b. If the marijuana product contains ethanol, the percentage of ethanol in the marijuana product;
 10. The date of manufacture, harvest, or sale; and
 11. The registry identification number of the qualifying patient.
- B.** If a dispensary provides medical marijuana cultivated, or a marijuana product infused or prepared for sale, by the dispensary to another dispensary, the dispensary shall ensure that:
1. The medical marijuana or marijuana product is labeled with:
 - a. The dispensary’s registry identification number;
 - b. The amount, strain, and batch number of the medical marijuana or marijuana product; and
 - c. The date of harvest or sale; and

2. A copy of laboratory testing results for the medical marijuana or marijuana product is provided to the receiving dispensary.
- C. A dispensary shall ensure that medical marijuana or a marijuana product being submitted to a laboratory for testing is labelled according to requirements in R9-17-317.01(B)(5).

R9-17-317.01. Analysis of Medical Marijuana or a Marijuana Product

- A. Before offering a batch of medical marijuana or of a marijuana product for sale or dispensing to a qualifying patient or designated caregiver, a dispensary shall ensure that:
1. Except as provided in subsection (A)(2), each batch of medical marijuana or marijuana product is tested in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1; and
 2. Each batch of a marijuana product is tested according to requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 for, as applicable:
 - a. At least potency and microbial contaminants other than mycotoxins if the marijuana product was prepared from another marijuana product, such as a concentrate or tincture, that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, using none of the following:
 - i. A temperature above which any analyte could chemically decompose or react with a component of the marijuana product;
 - ii. A pressure above which any analyte could chemically decompose or react with a component of the marijuana product;
 - iii. A process by which any analyte in the marijuana product that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 may be further concentrated; or
 - iv. A solvent other than water; or
 - b. All analytes except ethanol if the marijuana product is intended to contain ethanol.
- B. A dispensary shall ensure that:
1. Until laboratory testing has been completed and testing results received by the dispensary that comply with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, a batch of marijuana or of a marijuana product is stored in a location away from medical marijuana and marijuana products offered for dispensing;
 2. Only one sample of each batch of medical marijuana or marijuana product is collected according to ANSI/ASQ Standard Z1.4 (2018), General Inspection Level II, incorporated by reference, including no future editions, and available at <https://asq.org/quality-resources/z14-z19>, including:
 - a. Use, as applicable, of one of the following sampling methods:
 - i. Top, middle, and bottom sampling using a sample thief, a device consisting of two nested tubes with one or more aligned slots through which a sample may be collected and then sealed into the inner tube by rotating the outer tube;

- ii. Star pattern sampling from the top, middle, and bottom of each storage container;
 - iii. Collecting discrete incremental units of a batch, such as every tenth unit or every twentieth drop;
or
 - iv. Quartering until the sample reaches the size specified in subsection (B)(3); and
 - b. For sampling methods specified in subsections (B)(2)(a)(i) through (iii), quartering the volume of the aggregated portions collected to obtain the sample size specified in subsection (B)(3);
 - 3. The size of the sample provided to a laboratory is sufficient for testing and, if necessary, retesting;
 - 4. Each sample in subsection (B)(3) is packaged in a container made of:
 - a. The same material that would be used for dispensing, or
 - b. Another material that will not react with or leach into the sample;
 - 5. Each packaged sample is labeled with the:
 - a. The dispensary's registry identification number;
 - b. The amount, strain, and batch number of the medical marijuana or marijuana product;
 - c. The storage temperature for the medical marijuana or marijuana product; and
 - d. The date of sampling;
 - 6. A packaged sample in subsection (B)(4) is submitted to a laboratory that:
 - a. Has a laboratory registration certificate issued by the Department, and
 - b. Is approved for testing by the Department for an analyte for which testing is being requested;
 - 7. Except as specified in subsections (A)(2) and (C)(1) or (3)(b), as applicable, the samples in subsection (B)(4) are tested for each analyte specified in Table 3.1 by a laboratory that is approved by the Department for testing the analyte;
 - 8. Only batches of marijuana or marijuana products for which laboratory testing results in subsection (B)(7) are in compliance with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 are offered for sale or dispensing; and
 - 9. Except as provided in subsection (C), any batch of marijuana or marijuana product that does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 is remediated, if applicable, or destroyed according to policies and procedures.
- C. If a dispensary receives a final report of testing, specified in R9-17-404.06(B)(3), from a laboratory that indicates that a batch of marijuana or marijuana product does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, the dispensary:
- 1. Within seven days after receiving the final report of testing, may request retesting of the remaining portion of the sample in subsection (B)(4) for all analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 by a second, independent laboratory that is approved by the Department for testing the analytes;
 - 2. If the final report of testing from the second, independent laboratory indicates that any analyte tested for

according to subsection (C)(1) does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, shall remediate, if applicable, or destroy the batch of marijuana or marijuana product according to policies and procedures;

3. If the final report of testing from the second, independent laboratory indicates that all analytes tested for according to subsection (C)(1) comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1:
 - a. Shall ensure that the batch of medical marijuana or marijuana product is not offered for sale or dispensing; and
 - b. May request retesting of the remaining portion of the sample in subsection (B)(4) for the analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 by a third, independent laboratory that is approved by the Department for testing the analytes; and
 4. If the dispensary requested retesting of the remaining portion of the sample in subsection (B)(4) for an analyte by a third, independent laboratory according to subsection (C)(3)(b):
 - a. If the final report of testing from the third, independent laboratory indicates that the analyte tested for according to subsection (C)(3) complies with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, may offer the batch of medical marijuana or marijuana product for sale or dispensing; and
 - b. If the final report of testing from the third, independent laboratory indicates that an analyte tested for according to subsection (C)(3) does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, shall remediate, if applicable, or destroy the batch of medical marijuana or marijuana product according to policies and procedures.
- D.** A dispensary shall ensure that remediation of a batch of marijuana or of a marijuana product that has undergone laboratory testing and does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1:
1. Is performed according to policies and procedures,
 2. Uses a method that is appropriate to address an analyte not in compliance with Table 3.1, and
 3. Does not introduce or produce a substance in a concentration that is known to be harmful to humans.
- E.** If a batch of medical marijuana or a marijuana product is remediated, a dispensary shall submit samples from the remediated batch for laboratory testing according to subsection (B).
- F.** A dispensary shall provide to the Department upon request a sample of the dispensary's inventory of medical marijuana or a marijuana product of sufficient quantity to enable the Department to conduct an analysis of the medical marijuana or marijuana product.

Table 3.1. Analytes

Key:

- CAS Number = Chemical Abstract Services Registry number
- CFU = Colony-forming unit, a method to estimate the number of viable bacteria or fungal cells in a sample
- * = Testing for the analyte required beginning May 1, 2021

A. Microbial Contaminants			
Analyte	Maximum Allowable Contaminants		Required Action
<i>Escherichia coli</i>	100 CFU/g		Remediate and retest, or Destroy
<i>Salmonella spp.</i>	Detectable in 1 gram		Destroy
<i>Aspergillus flavus</i> <i>Aspergillus fumigatus</i> <i>Aspergillus niger</i> <i>Aspergillus terreus</i>	Inhalable: Detectable in 1 gram		Remediate and retest, Remediate and use for preparing an extract or a concentrate, or Destroy
*Mycotoxins: Aflatoxin B1, B2, G1, and G2 Ochratoxin A	Marijuana product, except a marijuana product intended for topical application, prepared from an extract or concentrate of medical marijuana: 20 µg/kg (ppb) of total aflatoxins 20 µg/kg (ppb) of ochratoxin		Destroy
B. Heavy Metals			
Analyte	Maximum Allowable Concentration		Required Action
Arsenic	0.4 ppm		Remediate and retest, or Destroy
Cadmium	0.4 ppm		
Lead	1.0 ppm		
Mercury	1.2 ppm		
C. Residual Solvents			
Analyte	CAS Number	Maximum Allowable Concentration	Required Action
Acetone	67-64-1	1,000 ppm	Remediate and retest, or Destroy
Acetonitrile	75-05-8	410 ppm	
Benzene	71-43-2	2 ppm	
Butanes (measured as the cumulative residue of n-butane and iso-butane)	106-97-8 and 75-28-5, respectively	5,000 ppm	
Chloroform	67-66-3	60 ppm	
Dichloromethane	75-09-2	600 ppm	
Ethanol	64-17-5	5,000 ppm	
Ethyl Acetate	141-78-6	5,000 ppm	
Ethyl Ether	60-29-7	5,000 ppm	
Heptane	142-82-5	5,000 ppm	
Hexanes (measured as the cumulative residue of n-hexane, 2-	110-54-3, 107-83-5, 96-14-0, 75-83-2,	290 ppm	

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methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	and 79-29-8, respectively		
Isopropyl Acetate	108-21-4	5,000 ppm	
Methanol	67-56-1	3,000 ppm	
Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neo-pentane)	109-66-0, 78-78-4, and 463-82-1, respectively	5,000 ppm	
2-Propanol (IPA)	67-63-0	5,000 ppm	
Propane	74-98-6	5,000 ppm	
Toluene	108-88-3	890 ppm	
Xylenes (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethyl benzene)	1330-20-7 (95-47-6, 108-38-3, and 106-42-3, respectively, and 100-41-4)	2,170 ppm	

D. Pesticides, Fungicides, Growth Regulators

Analyte	CAS Number	Maximum Allowable Concentration	Required Action
*Abamectin	71751-41-2	0.5 ppm	Remediate and retest, or Destroy
Acephate	30560-19-1	0.4 ppm	
Acequinocyl	57960-19-7	2.0 ppm	
Acetamiprid	135410-20-7	0.2 ppm	
Aldicarb	116-06-3	0.4 ppm	
Azoxystrobin	131860-33-8	0.2 ppm	
*Bifenazate	149877-41-8	0.2 ppm	
Bifenthrin	82657-04-3	0.2 ppm	
Boscalid	188425-85-6	0.4 ppm	
Carbaryl	63-25-2	0.2 ppm	
Carbofuran	1563-66-2	0.2 ppm	
*Chlorantraniliprole	500008-45-7	0.2 ppm	
*Chlorfenapyr	122453-73-0	1.0 ppm	
Chlorpyrifos	2921-88-2	0.2 ppm	
*Clofentezine	74115-24-5	0.2 ppm	
*Cyfluthrin	68359-37-5	1.0 ppm	
*Cypermethrin	52315-07-8	1.0 ppm	
*Daminozide	1596-84-5	1.0 ppm	
*DDVP (Dichlorvos)	62-73-7	0.1 ppm	
Diazinon	333-41-5	0.2 ppm	
Dimethoate	60-51-5	0.2 ppm	
Ethoprophos	13194-48-4	0.2 ppm	
Etofenprox	80844-07-1	0.4 ppm	
Etoxazole	153233-91-1	0.2 ppm	
Fenoxycarb	72490-01-8	0.2 ppm	
Fenpyroximate	134098-61-6	0.4 ppm	
*Fipronil	120068-37-3	0.4 ppm	
Flonicamid	158062-67-0	1.0 ppm	
Fludioxonil	131341-86-1	0.4 ppm	

Unofficial version of the Rules in 9 A.A.C. 17, effective May 3, 2021

Hexythiazox	78587-05-0	1.0 ppm
Imazalil	35554-44-0	0.2 ppm
Imidacloprid	138261-41-3	0.4 ppm
Kresoxim-methyl	143390-89-0	0.4 ppm
Malathion	121-75-5	0.2 ppm
Metalaxyl	57837-19-1	0.2 ppm
Methiocarb	2032-65-7	0.2 ppm
Methomyl	16752-77-5	0.4 ppm
Myclobutanil	88671-89-0	0.2 ppm
Naled	300-76-5	0.5 ppm
Oxamyl	23135-22-0	1.0 ppm
*Paclobutrazol	76738-62-0	0.4 ppm
*Permethrins (measured as the cumulative residue of cis- and trans- isomers)	52645-53-1 (54774-45-7 and 51877-74-8)	0.2 ppm
*Phosmet	732-11-6	0.2 ppm
Piperonyl butoxide	51-03-6	2.0 ppm
*Prallethrin	23031-36-9	0.2 ppm
Propiconazole	60207-90-1	0.4 ppm
Propoxur	114-26-1	0.2 ppm
*Pyrethrins (measured as the cumulative residue of pyrethrin 1, cinerin 1 and jasmolin 1)	8003-34-7 (121-21-1, 25402-06-6, and 4466-14-2)	1.0 ppm
*Pyridaben	96489-71-3	0.2 ppm
*Spinosad	168316-95-8	0.2 ppm
Spiromesifen	283594-90-1	0.2 ppm
Spirotetramat	203313-25-1	0.2 ppm
Spiroxamine	118134-30-8	0.4 ppm
Tebuconazole	107534-96-3	0.4 ppm
Thiacloprid	111988-49-9	0.2 ppm
Thiamethoxam	153719-23-4	0.2 ppm
Trifloxystrobin	141517-21-7	0.2 ppm

E. Potency

Analyte	Labelling	Required Action
Tetrahydrocannabinolic acid (THC-A)	Label claim is not within +/- 20 % of tested value	Revise label as necessary
Delta-9-tetrahydrocannabinol (Δ^9 -THC)		
Cannabidiolic acid (CBD-A)		
Cannabidiol (CBD)		

F. Herbicides

Analyte	Maximum Allowable Contaminant	Required Action
Pendimethalin	0.1 ppm	Remediate and retest, or Destroy

R9-17-318. Security

- A.** Except as provided in R9-17-310(A)(7) or R9-17-324(C), a dispensary shall ensure that access into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, manufactured, or stored is limited to the dispensary's principal officers, board members, and authorized dispensary agents.
- B.** A dispensary agent may transport marijuana, marijuana plants, marijuana products, and marijuana paraphernalia between the dispensary and:
 - 1. The dispensary's cultivation site,
 - 2. A qualifying patient,
 - 3. Another dispensary, and
 - 4. A laboratory that has a laboratory registration certificate issued by the Department.
- C.** Before transportation, a dispensary agent shall:
 - 1. Complete a trip plan that includes:
 - a. The name of the dispensary agent in charge of transporting the marijuana;
 - b. The date and start time of the trip;
 - c. A description of the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia being transported;
 - d. Any anticipated stops during the trip, including the locations of the stop and arrival and departure time from the location; and
 - e. The anticipated route of transportation; and
 - 2. Provide a copy of the trip plan in subsection (C)(1) to the dispensary.
- D.** During transportation, a dispensary agent shall:
 - 1. Carry a copy of the trip plan in subsection (C)(1) with the dispensary agent for the duration of the trip;
 - 2. Use a vehicle without any medical marijuana identification;
 - 3. Have a means of communication with the dispensary; and
 - 4. Ensure that the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia are not visible.
- E.** After transportation, a dispensary agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).
- F.** A dispensary shall:
 - 1. Maintain the documents required in subsection (C)(2) and (E) for at least two years after the date of the documentation;
 - 2. If transporting a sample to a laboratory for testing, provide a copy of the trip plan to the laboratory; and
 - 3. Provide a copy of the documents required in subsection (C)(2) and (E) to the Department for review upon request.
- G.** To prevent unauthorized access to medical marijuana at the dispensary and, if applicable, the dispensary's

cultivation site, the dispensary shall have the following:

1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:
 - a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device;
 - b. Exterior lighting to facilitate surveillance;
 - c. Electronic monitoring including:
 - i. At least one 19-inch or greater call-up monitor;
 - ii. A printer capable of immediately producing a clear still photo from any video camera image;
 - iii. Video cameras:
 - (1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building; and
 - (2) Having a recording resolution of at least 704 x 480 or the equivalent;
 - iv. A video camera at each point of sale location allowing for the identification of any qualifying patient or designated caregiver purchasing medical marijuana;
 - v. A video camera in each grow room capable of identifying any activity occurring within the grow room in low light conditions;
 - vi. Storage of video recordings from the video cameras for at least 30 calendar days;
 - vii. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
 - viii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and
 - d. Panic buttons in the interior of each building; and
2. Policies and procedures:
 - a. That restrict access to the areas of the dispensary that contain marijuana and, if applicable, the dispensary's cultivation site to authorized individuals only;
 - b. That provide for the identification of authorized individuals;
 - c. That prevent loitering;
 - d. For conducting electronic monitoring; and
 - e. For the use of a panic button.

R9-17-319. Edible Food Products

A. A dispensary that prepares, sells, or dispenses marijuana-infused edible food products shall:

1. Before preparing, selling, or dispensing marijuana-infused edible food product obtain written

- authorization from the Department to prepare, sell, or dispense marijuana-infused edible food products;
2. If the dispensary prepares the marijuana-infused edible food products, ensure that the marijuana-infused edible food products are prepared according to the applicable requirements in 9 A.A.C. 8, Article 1;
 3. If the marijuana-infused edible food products are not prepared at the dispensary, obtain and maintain at the dispensary a copy of the current written authorization to prepare marijuana-infused edible food products from the dispensary that prepares the marijuana-infused edible products; and
 4. If a dispensary sells or dispenses marijuana-infused edible food products, ensure that the marijuana-infused edible food products are sold or dispensed according to applicable requirements in 9 A.A.C. 8, Article 1.
- B.** A dispensary is responsible for the content and quality of any edible food product sold or dispensed by the dispensary.

R9-17-320. Cleaning and Sanitation

- A.** A dispensary shall ensure that:
1. Any building or equipment used by a dispensary for the cultivation, harvest, preparation, packaging, storage, infusion, or sale of medical marijuana or marijuana products is maintained in a clean and sanitary condition;
 2. Medical marijuana or marijuana products, in the process of production, preparation, manufacture, packing, storage, sale, distribution, or transportation, are protected from flies, dust, dirt, and all other contamination;
 3. Refuse or waste products incident to the manufacture, preparation, packing, selling, distributing, or transportation of medical marijuana or marijuana products are removed from the building used as a dispensary and, if applicable, a building at the dispensary's cultivation site at least once every 24 hours or more often as necessary to maintain a clean condition;
 4. All trucks, trays, buckets, other receptacles, platforms, racks, tables, shelves, knives, saws, cleavers, other utensils, or the machinery used in moving, handling, cutting, chopping, mixing, canning, packaging, or other processes are cleaned daily;
 5. Any equipment used in the preparation of marijuana products is clean, in good repair, and, if applicable, calibrated according to the manufacturer's recommendations;
 6. Any supplies used in the preparation of marijuana products, including flammable or volatile chemicals, are stored in a manner to avoid a hazardous condition from occurring; and
 7. All stored marijuana products are securely covered.
- B.** A dispensary shall ensure that a dispensary agent at the dispensary or the dispensary's cultivation site:
1. Cleans the dispensary agent's hands and exposed portions of the dispensary agent's arms in a hand washing sink;

- a. Before preparing medical marijuana or marijuana products including working with food, equipment, and utensils;
 - b. During preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
 - c. After handling soiled equipment or utensils;
 - d. After touching bare human body parts other than the dispensary agent's clean hands and exposed portions of arms; and
 - e. After using the toilet room;
2. If working directly with the preparation of medical marijuana or the infusion of marijuana into non-edible products:
 - a. Keeps the dispensary agent's fingernails trimmed, filed, and maintained so that the edges and surfaces are cleanable;
 - b. Unless wearing intact gloves in good repair, does not have fingernail polish or artificial fingernails on the dispensary agent's fingernails; and
 - c. Wears protective apparel such as coats, aprons, gowns, or gloves to prevent contamination;
 3. Wears clean clothing appropriate to assigned tasks;
 4. Reports to the medical director any health condition experienced by the dispensary agent that may adversely affect the safety or quality of any medical marijuana or marijuana products with which the dispensary agent may come into contact; and
 5. If the medical director determines that a dispensary agent has a health condition that may adversely affect the safety or quality of the medical marijuana or marijuana products, is prohibited from direct contact with any medical marijuana, marijuana products, or equipment or materials for processing medical marijuana or marijuana products until the medical director determines that the dispensary agent's health condition will not adversely affect the medical marijuana or marijuana products.

R9-17-321. Physical Plant

- A. A dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed, as applicable:
 1. Before the date the dispensary submitted the initial dispensary registration certificate application,
 2. Before the date of an application to change the location of the dispensary, or
 3. Before the date of an application to add a cultivation site.
- B. A dispensary shall provide onsite parking or parking adjacent to the building used as the dispensary.
- C. A building used as a dispensary or the location used as a dispensary's cultivation site shall have:
 1. At least one toilet room;
 2. Each toilet room shall contain:

- a. A flushable toilet;
 - b. Mounted toilet tissue;
 - c. A sink with running water;
 - d. Soap contained in a dispenser; and
 - e. Disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer;
3. At least one hand washing sink not located in a toilet room;
 4. Designated storage areas for medical marijuana or materials used in direct contact with medical marijuana separate from storage areas for toxic or flammable materials; and
 5. If preparation or packaging of medical marijuana is done in the building, a designated area for the preparation or packaging that:
 - a. Includes work space that can be sanitized, and
 - b. Is only used for the preparation or packaging of medical marijuana.
- D.** For each commercial device used at a dispensary or the dispensary's cultivation site, the dispensary shall:
1. Ensure that the commercial device is licensed or certified pursuant to A.R.S. § 41-2091,
 2. Maintain documentation of the commercial device's license or certification, and
 3. Provide a copy of the commercial device's license or certification to the Department for review upon request.

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

- A.** The Department shall deny an application for a dispensary registration certificate or a renewal if:
1. For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application, before the date of an application to change the location of the dispensary, or before the date of an application to add a cultivation site;
 2. A principal officer or board member:
 - a. Has been convicted of an excluded felony offense;
 - b. Has served as a principal officer or board member for a dispensary that:
 - i. Had the dispensary registration certificate revoked, or
 - ii. Did not obtain an approval to operate the dispensary within the first year after the dispensary registration certificate was issued;
 - c. Is under 21 years of age;
 - d. Is a physician currently providing written certifications for medical marijuana for qualifying patients;
 - e. Is a law enforcement officer; or
 - f. Is an employee or contractor of the Department; or

3. The application or the dispensary does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter.
- B.** The Department may deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary provides false or misleading information to the Department.
- C.** The Department shall revoke a dispensary's registration certificate if:
1. The dispensary:
 - a. Operates before obtaining approval to operate a dispensary from the Department;
 - b. Diverts marijuana to an entity other than:
 - i. Another dispensary with a valid dispensary registration certificate issued by the Department,
 - ii. A laboratory with a valid laboratory registration certificate issued by the Department,
 - iii. A qualifying patient with a valid registry identification card issued by the Department,
 - iv. A designated caregiver with a valid registry identification card issued by the Department,
 - v. A dispensary agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a dispensary, or
 - vi. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory;
 - c. Acquires usable marijuana or mature marijuana plants from any entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
 - d. Acquires a marijuana product from any person other than another dispensary with a valid dispensary registration certificate issued by the Department; or
 2. A principal officer or board member has been convicted of an excluded felony offense.
- D.** The Department may revoke a dispensary registration certificate if the dispensary does not:
1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 2. Implement the policies and procedures or comply with the statements provided to the Department with the dispensary's application.
- E.** If the Department denies a dispensary registration certificate application, the Department shall provide notice to the applicant that includes:
1. The specific reason or reasons for the denial, and
 2. All other information required by A.R.S. § 41-1076.
- F.** If the Department revokes a dispensary registration certificate, the Department shall provide notice to the dispensary that includes:
1. The specific reason or reasons for the revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-323. Denial or Revocation of a Dispensary Agent's Registry Identification Card

- A.** The Department shall deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent:
1. Does not meet the definition "nonprofit medical marijuana dispensary agent" in A.R.S. § 36-2801; or
 2. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter.
- B.** The Department may deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent provides false or misleading information to the Department.
- C.** The Department shall revoke a dispensary agent's registry identification card if the dispensary agent:
1. Uses medical marijuana, if the dispensary agent does not have a qualifying patient registry identification card;
 2. Diverts marijuana to an entity other than:
 - a. Another dispensary with a valid dispensary registration certificate issued by the Department,
 - b. A laboratory with a valid laboratory registration certificate issued by the Department,
 - c. A qualifying patient with a valid registry identification card issued by the Department,
 - d. A designated caregiver with a valid registry identification card issued by the Department,
 - e. A dispensary agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a dispensary, or
 - f. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory; or
 3. Has been convicted of an excluded felony offense.
- D.** The Department may revoke a dispensary agent's registry identification card if the dispensary agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- E.** If the Department denies or revokes a dispensary agent's registry identification card, the Department shall provide notice to the dispensary agent and the dispensary agent's dispensary that includes:
1. The specific reason or reasons for the denial or revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-324. Dual Licensees

- A.** If a dispensary is a dual licensee, the dispensary shall:
1. Provide marijuana and marijuana products, according to A.A.C. R9-18-309, to consumers, as defined in A.R.S. § 36-2850, at the same location as the dispensary dispenses medical marijuana and marijuana products to qualifying patients and designated caregivers;

2. Notify the Department within five calendar days after beginning to operate on a for-profit basis, as allowed by A.R.S. § 36-2858(D)(2), and, if applicable, provide to the Department the documents required in R9-17-304(C)(2) for the new organizational or corporate structure; and
 3. Comply with the requirements in A.R.S. § 36-2858(D)(3).
- B.** If a dispensary is a dual licensee, the entity holding the valid dispensary registration certificate may:
1. Request that the dispensary's cultivation site, specified according to R9-17-305(A)(1)(e) or R9-17-307(A)(1), be transferred under the entity's marijuana establishment license according to A.A.C. R9-18-303(E)(3); or
 2. Request approval of a change in the location in subsection (A)(1) by complying with the requirements in both:
 - a. R9-17-307(A), and
 - b. A.A.C. R9-18-306.
- C.** A dispensary that is a dual licensee may allow an individual without a dispensary agent registry identification card to be employed by or contracted with the dispensary and into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, manufactured, or stored if:
1. The individual has a marijuana facility agent license, issued under 9 A.A.C. 18, Article 2, associated with the entity holding the dispensary's dispensary registration certificate and marijuana establishment license; or
 2. The individual:
 - a. Is not at the dispensary or the dispensary's cultivation site more than once per week; and
 - b. When at the dispensary or the dispensary's cultivation site, is supervised by a dispensary agent who has a valid registry identification card or an individual in subsection (C)(1).
- D.** A dispensary that is a dual licensee is exempt from the requirements in:
1. R9-17-310(A)(5), (12), and (13);
 2. R9-17-313; and
 3. R9-17-320(B)(4) and (5), but shall ensure that a dispensary agent or marijuana facility agent at the dispensary or the dispensary's cultivation site:
 - a. Reports to a principal officer or board member of the dispensary any health condition experienced by the dispensary agent or marijuana facility agent that may adversely affect the safety or quality of any medical marijuana or marijuana products with which the dispensary agent or marijuana facility agent may come into contact; and
 - b. If the principal officer or board member determines that a dispensary agent or marijuana facility agent has a health condition that may adversely affect the safety or quality of the medical marijuana or marijuana products, is prohibited from direct contact with any medical marijuana, marijuana products, or equipment or materials for processing medical marijuana or marijuana products until the principal

officer or board member determines that the dispensary agent's or marijuana facility agent's health condition will not adversely affect the medical marijuana or marijuana products.

- E. If the Department identifies an instance of noncompliance with a requirement of both this Chapter and 9 A.A.C. 18 during an inspection of a dual licensee, the Department shall note the instance of noncompliance on a notice of deficiencies associated with the dual licensee's marijuana establishment license under 9 A.A.C. 18, rather than on both the notice of deficiencies for the dispensary registration certificate and the notice of deficiencies for the marijuana establishment license.

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

R9-17-401. Owner

- A.** For the purposes of this Article, the following individuals are considered owners:
1. If an individual is applying for a laboratory registration certificate, the individual;
 2. If a corporation is applying for a laboratory registration certificate, two individuals who are officers of the corporation;
 3. If a partnership is applying for a laboratory registration certificate, two of the individuals who are partners;
 4. If a limited liability company is applying for a laboratory registration certificate, a manager or, if the limited liability company does not have a manager, an individual who is a member of the limited liability company;
 5. If an association or cooperative is applying for a laboratory registration certificate, two individuals who are members of the governing board of the association or cooperative;
 6. If a joint venture is applying for a laboratory registration certificate, two of the individuals who signed the joint venture agreement; and
 7. If a business organization type other than those described in subsections (A)(2) through (6) is applying for a laboratory registration certificate, two individuals who are members of the business organization.
- B.** When a laboratory is required by this Chapter to provide information, sign documents, or ensure actions are taken, the individual or individuals in subsection (A) shall comply with the requirement on behalf of the laboratory.

R9-17-402. Applying for a Laboratory Registration Certificate

- A.** To apply for a laboratory registration certificate, an applicant shall submit to the Department the following:
1. An application in a Department-provided format that includes:
 - a. The physical address of the laboratory;
 - b. The distance to the closest private school or public school from the laboratory;
 - c. The following information for the laboratory applying:
 - i. The legal name of the laboratory,
 - ii. Type of business organization,
 - iii. Mailing address,
 - iv. Telephone number, and
 - v. E-mail address;
 - d. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;

- e. The name, residence address, and date of birth of each owner;
 - f. The identifying number on the applicable card or document in subsection (A)(4)(d)(i) through (v);
 - g. The name, residence address, and date of birth of the technical laboratory director designated according to R9-17-404(3);
 - h. The name, residence address, and date of birth of each laboratory agent other than an owner or the technical laboratory director, if applicable;
 - i. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
 - j. An attestation that the information provided to the Department to apply for a laboratory registration certificate is true and correct; and
 - k. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. Policies and procedures that comply with the requirements in this Chapter that contain:
- a. Inventory control;
 - b. A chain of custody and sample requirement process;
 - c. A records retention process;
 - d. A secure method to transfer the portion of a sample remaining after testing to another laboratory with an approval for testing issued by the Department:
 - i. For testing of parameters or analytes that the laboratory receiving the sample from a dispensary is not approved by the Department to conduct, or
 - ii. For retesting at the request of a dispensary according to R9-17-317.01(C);
 - e. Security;
 - f. A process to ensure marijuana or marijuana products testing results are accurate, precise, and scientifically valid before reporting the results; and
 - g. A process for disposal of marijuana or marijuana products that are submitted to the laboratory for testing;
3. If the applicant is one of the business organizations in R9-17-401(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:
- a. The name of the business organization,
 - b. The type of business organization, and
 - c. The names and titles of the individuals in R9-17-401(A);
4. For each owner:
- a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;

- b. An attestation signed and dated by the owner that the owner does not have a direct or indirect familial or financial relationship with or interest in a dispensary, related medical marijuana business entity, or management company;
- c. An attestation signed and dated by the owner that the laboratory will not test marijuana or marijuana products for a designated caregiver who the owner has a direct or indirect familial or financial relationship with;
- d. An attestation signed and dated by the owner pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
- e. A copy the owner's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the owner's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the owner:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U. S. Certificate of Naturalization, or
 - (3) U. S. Certificate of Citizenship; and
- f. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
 - i. The owner's fingerprints on a fingerprint card that includes:
 - (1) The owner's first name; middle initial, if applicable; and last name;
 - (2) The owner's signature;
 - (3) If different from the owner, the signature of the individual physically rolling the owner's fingerprints;
 - (4) The owner's residence address;
 - (5) If applicable, the owner's surname before marriage and any names previously used by the owner;
 - (6) The owner's date of birth;
 - (7) The owner's Social Security number;
 - (8) The owner's citizenship status;
 - (9) The owner's gender;
 - (10) The owner's race;
 - (11) The owner's height;
 - (12) The owner's weight;
 - (13) The owner's hair color;

- (14) The owner's eye color; and
 - (15) The owner's place of birth; or
 - ii. If the fingerprints and information required in subsection (A)(4)(f)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the owner as a result of the application;
5. If zoning restrictions have been enacted, a sworn statement signed and dated by the individual or individuals in R9-17-401(A) certifying that the laboratory is in compliance with any local zoning restrictions;
 6. A copy of documentation issued by the local jurisdiction to the laboratory authorizing occupancy of the building as a laboratory, such as a certificate of occupancy, a special use permit, or a conditional use permit;
 7. A site plan drawn to scale of the laboratory location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;
 8. A building plan drawn to scale of the building where the laboratory is located showing the:
 - a. Layout and dimensions of each room;
 - b. Name and function of each room;
 - c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;
 - d. Location of each fire protection device;
 - e. Layout of heating, air conditioning, exhaust, and ventilation systems;
 - f. Location and layout of refrigerated rooms or freezer rooms;
 - g. Location of each sink, safety shower, other water supply, or plumbing fixture;
 - h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;
 - i. Location of security measures or equipment to protect from diversion of marijuana or marijuana products; and
 - j. Means of egress;
 9. Documentation of accreditation of the location specified according to subsection (A)(1)(a) for which the applicant is applying for a laboratory registration certificate;
 10. The laboratory's Transaction Privilege Tax Number issued by the Arizona Department of Revenue, if applicable; and
 11. The applicable fee in R9-17-102 for applying for a laboratory registration certificate.

- B.** Within 72 hours after an owner receives a laboratory registration certificate pursuant to an application submitted according to subsection (A), the owner shall apply for a laboratory agent registry identification card, according to R9-17-405, for each laboratory agent, including a technical laboratory director.
- C.** A change in location of the laboratory's physical address or ownership requires a new application to be submitted according to subsection (A).
- D.** A separate laboratory registration certificate is required for each noncontiguous portion of a laboratory.

R9-17-402.01. Applying for Approval for Testing

To apply for approval for testing, an applicant shall submit to the Department, at least 60 calendar days before the expiration of the initial laboratory registration certificate for the laboratory, the following:

1. An application in a Department-provided format that includes:
 - a. The name and registry identification number of the laboratory;
 - b. The physical address of the laboratory;
 - c. The name of the applicant;
 - d. The name of the technical laboratory director designated according to R9-17-404(3);
 - e. For each parameter for which approval for testing is being requested:
 - i. The analyte to be tested for,
 - ii. The instruments and equipment to be used for testing, and
 - iii. The software to be used at the laboratory for instrument control and data reduction interpretation;
 - f. The laboratory's proposed hours of operation;
 - g. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
 - h. Whether the laboratory is ready for an inspection by the Department;
 - i. If the laboratory is not ready for an inspection by the Department, the date the laboratory will be ready for an inspection by the Department;
 - j. An attestation that the information provided to the Department to apply for approval for testing is true and correct; and
 - k. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. For each parameter and analyte listed according to subsection (1)(e):
 - a. The limit of quantitation;
 - b. A copy of a proficiency testing report, if applicable, or accuracy testing documentation; and
 - c. A copy of the standard operating procedure;
3. Policies and procedures that comply with the requirements in this Chapter that include:
 - a. A quality assurance program and standards, and

- b. A process to compile testing results into a single laboratory report to be provided to a dispensary; and
- 4. If different from the building plan submitted according to R9-17-402(A)(8), a building plan drawn to scale of the building where the laboratory is located showing the:
 - a. Layout and dimensions of each room;
 - b. Name and function of each room;
 - c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;
 - d. Location of each fire protection device;
 - e. Layout of heating, air conditioning, exhaust, and ventilation systems;
 - f. Location and layout of refrigerated rooms or freezer rooms;
 - g. Location of each sink, safety shower, other water supply, or plumbing fixture;
 - h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;
 - i. Location of security equipment to protect from diversion of marijuana or marijuana products; and
 - j. Means of egress.

R9-17-403. Renewing a Laboratory Registration Certificate

To renew a laboratory registration certificate, an applicant shall submit to the Department, at least 30 calendar days before the expiration date of the current laboratory registration certificate, but no more than 90 days before the expiration date of the current laboratory registration certificate, the following:

- 1. An application in a Department-provided format that includes:
 - a. The physical address of the laboratory;
 - b. The following information for the laboratory:
 - i. The legal name of the laboratory,
 - ii. The registry identification number for the laboratory,
 - iii. Type of business organization,
 - iv. Mailing address,
 - v. Telephone number, and
 - vi. E-mail address;
 - c. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;
 - d. The name, residence address, and date of birth of each owner;
 - e. The name, residence address, and date of birth of the technical laboratory director designated according to R9-17-404(3);
 - f. The name, residence address, and date of birth of each laboratory agent, if applicable;

- g. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
 - h. An attestation that the information provided to the Department to renew the laboratory registration certificate is true and correct; and
 - i. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. For each owner:
 - a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. An attestation signed and dated by the owner that the laboratory will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity, or management company that the owner has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver who the owner has a direct or indirect familial or financial relationship with;
 3. For each current parameter and analyte, documentation of current accreditation;
 4. If a change has been made to the standard operating procedure for a current parameter, a copy of the revised standard operating procedure;
 5. If a change has been made in the quality assurance plan for a current parameter required in R9-17-404.03 or R9-17-404.04, a copy of the revised quality assurance plan; and
 6. The applicable fee in R9-17-102 for applying to renew a laboratory registration certificate.

R9-17-404. Administration

An owner of a laboratory with a laboratory registration certificate shall:

1. Comply with the:
 - a. Quality assurance requirements in R9-17-404.05,
 - b. Operation requirements in R9-17-404.06, and
 - c. Laboratory records and reports requirements in R9-17-404;
2. Maintain accreditation for each approved parameter and analyte;
3. Designate in writing a technical laboratory director who:
 - a. Has knowledge and experience in overseeing a laboratory as documented by:
 - i. A doctoral degree in chemistry, biochemistry, microbiology, or a similar laboratory science;
 - ii. A master's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and at least two years of experience working in a laboratory and providing laboratory testing; or
 - iii. A bachelor's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and

- at least four years of experience working in a laboratory and providing laboratory testing; and
- b. Is responsible for:
 - i. Ensuring that all services and tests provided by the laboratory are performed in compliance with the requirements in this Article;
 - ii. Directing and supervising services and tests provided by the laboratory;
 - iii. Overseeing the work of all personnel in the laboratory;
 - iv. Providing ongoing training to laboratory agents, as applicable to the functions performed by a laboratory agent; and
 - v. Ensuring safety and hazardous substance control in the laboratory;
 4. Notify the Department in writing within 20 business working days after any change in the technical laboratory director, providing the name and contact information for the new technical laboratory director;
 5. Develop, document, and implement policies and procedures regarding:
 - a. Job descriptions and employment contracts, including:
 - i. Personnel duties, authority, responsibilities, and qualifications;
 - ii. Personnel supervision;
 - iii. Ongoing training, applicable to the functions performed by a laboratory agent;
 - iv. Training in and adherence to confidentiality requirements;
 - v. Periodic performance evaluations, including proficiency testing or accuracy testing, as applicable, on a rotating basis among all laboratory agents performing similar functions; and
 - vi. Disciplinary actions;
 - b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
 - c. Inventory control, including:
 - i. Tracking;
 - ii. Accepting medical marijuana or marijuana products for testing;
 - iii. Transferring a portion of a sample to another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct;
 - iv. Testing medical marijuana and marijuana products;
 - v. Providing the remaining sample of tested medical marijuana or a marijuana product to another laboratory with an approval for testing issued by the Department at the request of a dispensary according to R9-17-317.01(C);
 - vi. Retaining the residual portion of a sample accepted for testing from a dispensary for at least 14 days after sending the final report of testing required in R9-17-404.06(B)(3) to the dispensary; and

- vii. Disposing of medical marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting:
 - (1) The method of disposal;
 - (2) Whether the medical marijuana or marijuana product was tested;
 - (3) If not tested, the reason for not testing;
 - (4) The laboratory agent overseeing the disposal; and
 - (5) The date of disposal;
- d. Standard operating procedures, including:
 - i. The review and updating of standard operating procedures;
 - ii. Requirements for a laboratory agent to review current, new, or updated standard operating procedures applicable to the functions performed by the laboratory agent; and
 - iii. Documenting the review of standard operating procedures by applicable laboratory agents;
- e. Laboratory records, including:
 - i. Maintenance and monitoring of instruments and equipment;
 - ii. Acceptance of medical marijuana and marijuana products for testing;
 - iii. The chain of custody for a sample accepted by the laboratory for testing;
 - iv. The storage of a submitted sample prior to testing to maintain the integrity of the sample and analyte;
 - v. The process for selecting a homogeneous portion of a submitted sample for testing;
 - vi. Ensuring testing results are accurate, precise, and scientifically valid before reporting the results;
 - vii. Reporting of testing results, including:
 - (1) Testing results obtained from another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct, or
 - (2) Testing results provided to another laboratory from which the laboratory had received a portion of a sample for testing of parameters or analytes that the other laboratory is not approved by the Department to conduct;
- viii. If applicable, transfer of a portion of a sample to another laboratory with an approval for testing issued by the Department for testing of parameters or analytes that the laboratory is not approved by the Department to conduct, including:
 - (1) The name and registry identification number of the dispensary from which the sample was obtained,
 - (2) The name and registry identification number of the laboratory to which the portion of the sample is being transferred,
 - (3) The date of the transfer,
 - (4) The amount of sample being transferred,

- (5) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the other laboratory;
- (6) The parameters or analytes being tested by the other laboratory, and
- (7) The testing results obtained from the other laboratory;
- ix. If applicable, transfer of the portion of a sample remaining after testing to another laboratory with an approval for testing issued by the Department at the request of a dispensary according to R9-17-317.01(C), including:
 - (1) The name and registry identification number of the dispensary,
 - (2) The name and registry identification number of the dispensary agent requesting the transfer on behalf of the dispensary,
 - (3) The date of the request,
 - (4) The amount of sample being transferred,
 - (5) The name and registry identification number of the other laboratory, and
 - (6) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the other laboratory;
- x. Confidentiality; and
- xi. Retention;
- f. A quality assurance program and standards;
- g. A records retention process; and
- h. Security;
- 6. Review and document the review of laboratory policies and procedures at least once every 12 months after the issue date of the laboratory registration certificate and update as needed;
- 7. Ensure that each laboratory agent has the laboratory agent's registry identification card in the laboratory agent's immediate possession when the laboratory agent is working or providing volunteer services related to marijuana or marijuana products testing at the laboratory;
- 8. Ensure that a laboratory agent accompanies any individual other than another laboratory agent associated with the laboratory when the individual is present in the area of the laboratory where marijuana or marijuana products are being tested or stored for testing;
- 9. Not allow an individual who does not possess a laboratory agent registry identification card issued under the laboratory registration certificate to:
 - a. Serve as an owner for the laboratory,
 - b. Be employed by the laboratory, or
 - c. Provide volunteer services at or on behalf of the laboratory;
- 10. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a laboratory agent no longer:

- a. Serves as an owner for the laboratory,
 - b. Is employed by the laboratory, or
 - c. Provides volunteer services at or on behalf of the laboratory;
11. Unless otherwise specified, maintain copies of any documentation required in this Chapter for at least two years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

R9-17-404.01. Compliance Monitoring

- A.** Submission of an application for a laboratory registration certificate constitutes permission for:
1. The Department's entry to and inspection of the laboratory, and
 2. The Department to conduct proficiency testing according to R9-17-404.02.
- B.** The Department shall conduct:
1. An initial laboratory inspection; and
 2. A follow-up laboratory inspection, at least annually.
- C.** The Department shall comply with A.R.S. § 41-1009 in conducting a laboratory inspection or investigation.
- D.** The Department shall not accept allegations of a laboratory's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.
- E.** If the Department receives an allegation of a laboratory's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the laboratory.
- F.** If the Department determines that a laboratory is not in compliance with the requirements of A.R.S. Title 36, Chapter 28.1, or this Chapter, the Department:
1. Shall provide the owner, according to R9-17-401(A), and technical laboratory director with a written notice that includes the specific rule or statute that was violated; and
 2. May:
 - a. Take an enforcement action as described in R9-17-410; or
 - b. Require that the technical laboratory director submit to the Department, within 30 calendar 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 qualifying patient or laboratory agent that:
 - i. Describes how each identified instance of noncompliance will be corrected and reoccurrence prevented, and
 - ii. Includes a date for correcting each instance of noncompliance that is appropriate to the actions necessary to correct the instance of noncompliance.
- G.** Under A.R.S. § 41-1009(G) and (I), the Department's decision regarding whether a technical laboratory director may submit a corrective action plan on behalf of a laboratory or whether a deficiency has been corrected or has been corrected within a reasonable period of time is not an appealable agency action as

defined by A.R.S. § 41-1092.

R9-17-404.02. Proficiency Testing; Accuracy Testing

- A.** At least once in each 12-month period, and more often if requested by the Department, a technical laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in proficiency testing provided by the Department or a proficiency testing service that:
1. Includes at least one proficiency testing sample for each parameter and analyte for which the laboratory has been approved or is requesting approval and for which proficiency testing samples are available;
 2. Demonstrates the laboratory agent's competence in testing for the parameter; and
 3. If the laboratory has been approved or has requested approval to test an analyte by different methods, may use the same proficiency testing sample for each method.
- B.** If a proficiency testing sample is not available for a specific parameter and analyte, a technical laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in accuracy testing for the parameter.
- C.** To demonstrate competence in testing for a parameter, testing results reported for the parameter shall be within acceptance limits established by the Department, according to R9-17-404.03 or R9-17-404.04, or the proficiency testing service, as applicable.
- D.** A technical laboratory director shall ensure that:
1. Each sample for proficiency testing accepted at the laboratory is analyzed at the laboratory;
 2. Each sample for accuracy testing is analyzed at the laboratory;
 3. Each sample for proficiency testing or accuracy testing is tested according to R9-17-404.03 or R9-17-404.04, using the same procedures and techniques employed for routine sample testing;
 4. A proficiency testing service provides the results for each proficiency testing sample directly to the laboratory and the Department;
 5. If proficiency testing is provided by the Department, the laboratory submits to the Department payment for the actual costs of the materials for proficiency testing; and
 6. If proficiency testing is not provided by the Department, the laboratory selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing.
- E.** The Department may submit blind proficiency testing samples to a laboratory at any time during the certification period.

R9-17-404.03. Method Criteria and References for Chemical Analyses

- A.** In addition to the definitions in A.R.S. § 36-2801 and R9-17-101, the following definitions apply in this Section unless otherwise stated:
1. "Limit of quantitation" means the lowest concentration of an analyte that may be detected and the

concentration of the analyte reliably and accurately determined.

2. “Matrix” means the specific components of a sample, other than the analyte being tested for.
 3. “Mid-level standard” means a standard that is between the highest concentration and lowest concentration of standards containing the same substances that are used as a reference when testing for the concentration of an analyte.
 4. “Response factor” means the ratio between a signal produced by an analyte relative to a signal produced by an internal standard at a specific concentration.
 5. “Retention time” means the length of time taken by an analyte to pass through a chromatography column.
 6. “Standard” means a sample of known concentration and containing specific substances that is used as a reference when testing for the concentration of an analyte.
- B.** To perform laboratory testing using chemical analytical methods for any of the analytes in Table 3.1, a laboratory may use:
1. An established national or international chemical method; or
 2. A laboratory-developed method that was validated according to:
 - a. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_k.pdf;
 - b. USDA - Guidelines for the Validation of Chemical Methods for the FDA FVM Program, 2nd Edition, April 2015, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.fda.gov/media/81810/download>; or
 - c. ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1_Guideline.pdf or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology>.
- C.** A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product by chemical analytical methods are:
1. Set up, tuned, and calibrated according to:
 - a. Manufacturer’s acceptance criteria, or
 - b. Criteria validated according to subsection (B), as applicable;
 2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.aoac.org/aoac-accreditation-guidelines-for-laboratories-alacc>; and
 3. Applicable for the analytes to be tested.

- D.** A technical laboratory director shall ensure that for an initial demonstration of capability:
1. Before implementing a method, at least four replicate reference samples for each analyte are:
 - a. Spiked into a clean matrix with, as applicable, an amount $\pm 20\%$ of the maximum allowable concentration for the analyte in Table 3.1 or the mid-level standard for potency testing;
 - b. Taken through the entire sample preparation and analysis process;
 - c. Have a relative standard deviation of $\pm 20\%$; and
 - d. Have an accuracy that meets the acceptance criteria in subsection (K)(2)(c);
 2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and
 3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.
- E.** For potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents, a technical laboratory director shall ensure that:
1. For establishing the retention time for an analyte, the retention time is determined by three injections, over the course of a 72-hour period, of a standard $\pm 20\%$ of, as applicable:
 - a. The maximum allowable concentration in Table 3.1 for the analyte; or
 - b. The mid-level standard for potency testing; and
 2. The width of the retention time window for each analyte is defined as ± 3 times the standard deviation of the mean absolute retention time that was established during the 72-hour period or 0.1 minutes, whichever is greater.
- F.** A technical laboratory director shall ensure that:
1. The laboratory complies with the following requirements related to calibration and standards:
 - a. Except as specified in subsection (F)(1)(c), a minimum of:
 - i. Five standards are used for an average response factor or for a linear model,
 - ii. Six standards are used for a quadratic model, and
 - iii. Seven standards are used for a cubic model;
 - b. An X-value of zero is not included as a calibration point;
 - c. A calibration curve for heavy metal testing includes a minimum of three standards and a calibration blank;
 - d. One standard is $\pm 20\%$ of the limit of quantitation;
 - e. Except as specified in subsection (F)(1)(f) and as applicable, one standard for each analyte is $\pm 20\%$ of the:
 - i. Maximum allowable concentration in Table 3.1 for the analyte, or

- ii. Mid-level standard for potency testing; and
 - f. For testing for residual solvents, either:
 - i. One standard for each analyte is $\pm 20\%$ of the maximum allowable concentration in Table 3.1 for the analyte; or
 - ii. A standard is created containing a concentration of specific analytes that is a dilution factor from the maximum allowable concentration in Table 3.1 for the analyte and is used when performing multiple runs on a sample, with or without dilution, to cover the range of maximum allowable concentrations in Table 3.1;
 - g. One standard is above the maximum allowable concentration in Table 3.1 for an analyte;
- 2. The acceptance criteria for testing is one of the following, as applicable:
 - a. The maximum relative standard deviation for the average calibration factor, for an external calibration model, or the response factor, for an internal calibration model, is no more than 20%; and
 - b. For linear and non-linear calibration models, the coefficient of determination (r^2) is greater than or equal to 0.99;
- 3. For chromatographic testing methods using internal standards for calibration:
 - a. The relative retention time of each analyte to the internal calibration standard is within 0.06 units;
 - b. The areas of the peaks for the internal standards in any sample are between 50 and 200% of the area of the peak of the internal standard in subsection (F)(1)(e) used for calibration; and
 - c. The internal standards:
 - i. Have retention times similar to the analytes being tested for,
 - ii. Do not interfere with any of the analytes, and
 - iii. Have similar chemical properties as the analytes being tested for; and
- 4. For methods testing for heavy metals using internal standards, the internal standards:
 - a. Are appropriate for the analyte, and
 - b. Do not interfere with any of the analytes.
- G.** To obtain an acceptable calibration, a technical laboratory director:
 - 1. May use any of the following options:
 - a. Perform instrument maintenance to optimize analyte responses, as long as all resulting calibration models meet the acceptance criteria appropriate for the analyte;
 - b. If the problem appears to be associated with a single standard:
 - i. Reanalyze that one standard, at the time of calibration and before any samples are analyzed, to rule out problems due to random error: and
 - ii. Recalculate and reevaluate the standard against the acceptance criteria;
 - c. Narrow the calibration range by replacing one or more of the calibration standards at the upper or lower ends of the curve;

- d. Narrow the calibration range by removing data points from either extreme end of the range and recalculating the calibration function; or
- e. Perform a new initial calibration according to subsection (F); and

2. May not:

- a. Remove data points from within a calibration range while still retaining the extreme ends of the calibration range, or
- b. Use non-linear calibrations to compensate for detector saturation or to avoid proper instrument maintenance.

H. A technical laboratory director shall ensure that for initial calibration verification:

- 1. Standards are prepared either from a different source or from a different lot of standards from the same source than the source from which the initial calibration standards specified in subsection (F)(1) were obtained and must, as applicable:

- a. Be $\pm 20\%$ of:

- i. The maximum allowable concentrations for an analyte in Table 3.1,
- ii. According to subsection (F)(1)(f)(ii), or
- iii. The mid-level standard for potency testing; and

- b. Contain all analytes being reported to comply with R9-17-317(A)(5); and

- 2. The following acceptance criteria are used:

- a. For potency testing, 80 to 120% recovery of true value;
- b. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 to 130% recovery of the true value; and
- c. For heavy metal testing, 90 to 110% recovery of the true value.

I. A technical laboratory director shall ensure that for the limit of quantitation:

- 1. The limit of quantitation is initially verified by the analysis of at least seven replicate samples, spiked at the limit of quantitation, and processed through all preparation and analysis steps of the method;
- 2. The signal-to-noise ratio of the replicate samples in subsection (I)(1) is at least 5:1;
- 3. The mean recovery of the replicate samples in subsection (I)(1) is:
 - a. For potency testing, $\pm 20\%$ of the true value;
 - b. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, $\pm 50\%$ of the true value; and
 - c. For heavy metal testing, $\pm 35\%$ of the true value;
- 4. The relative standard deviation of the replicate samples in subsection (I)(1) is less than 20%;
- 5. The limit of quantitation is, as applicable, no greater than:
 - a. Half the maximum allowable concentrations for an analyte in Table 3.1;
 - b. For chlorfenapyr, cyfluthrin, or cypermethrin, the maximum allowable concentrations for the analyte

in Table 3.1; or

- c. 1.0 mg/g for each analyte for potency testing;
 6. Any changes to specific sample amounts, dilutions, or volumes employed are reflected in the limit of quantitation stated on a sample report;
 7. The signal-to-noise ratio in subsection (I)(2) is reverified each time the instrument used for testing is calibrated; and
 8. Documentation of the current limit of quantitation is maintained for each analyte for each instrument.
- J.** Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis:
1. Continuing calibration verification standards:
 - a. Are prepared from the same calibration standard source used to prepare the standards specified in subsection (F)(1):
 - i. Initially, with a concentration $\pm 20\%$ of, as applicable, the maximum allowable concentration for an analyte in Table 3.1, according to subsection (F)(1)(f)(ii), or the mid-level standard for potency testing for all analytes being reported to comply with R9-17-317(A)(5); and
 - ii. Subsequently, with a concentration at or between the highest concentration and lowest concentration of standards for the analytes in the batch;
 - b. Have the following acceptance criteria:
 - i. For potency testing, 80 - 120% recovery of true value;
 - ii. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 - 130% recovery of the true value; and
 - iii. For heavy metal testing, 90 - 110% recovery of the true value;
 2. If internal standards are used in continuing calibration verification, the acceptability criteria of the internal standards is determined as follows:
 - a. For testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by mass spectrometry, if the area of the peak for an internal standard is different by a factor of two from the area of the respective standard in subsection (F)(1)(e), for the most recent initial calibration sequence, according to subsection (F):
 - i. The mass spectrometer is inspected for malfunctions and corrected, and
 - ii. Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(ii) before any samples are tested; and
 - b. For heavy metal testing:
 - i. The intensity of an internal standard is monitored for each analysis to ensure that the intensity does not vary by more than $\pm 30\%$, with respect to the intensity during the initial calibration in subsection (F); and
 - ii. If the intensity of an internal standard is outside the range also observed in the calibration blank

required in subsection (F)(1)(c):

- (1) Testing is stopped until the problem is corrected, the instrument is recalibrated, and the new calibration is verified;
- (2) Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(iii) before any samples are tested; and
- (3) The affected samples are retested; and

3. The frequency of continuing calibration verification is as follows:

- a. For testing by a method other than mass spectrometry:
 - i. At the beginning of the test;
 - ii. After every 20 samples, not counting a quality control sample, such as a sample required in subsection (K); and
 - iii. At the end of the test; and
- b. For testing by mass spectrometry:
 - i. At the beginning of the testing,
 - ii. After every 12 hours of running, and
 - iii. At the end of the run.

K. Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis:

1. A method blank, with a matrix similar to each type of sample matrix to be tested within the batch:
 - a. Contains the same internal standards as the samples in the batch,
 - b. Is prepared and tested with each batch, and
 - c. Produces results below the limit of quantitation;
2. Except as provided in subsection (R), a laboratory control sample and duplicate:
 - a. Are prepared \pm 20% of, as applicable:
 - i. The maximum allowable concentrations for an analyte in Table 3.1,
 - ii. According to subsection (F)(1)(f)(ii), or
 - iii. The mid-level standard for potency testing;
 - b. Are carried through all stages of sample preparation and included with each analytical batch of up to 20 samples; and
 - c. Have the following acceptance criteria:
 - i. For potency testing, 80 - 120% recovery of true value;
 - ii. Except as specified in subsection (K)(2)(c)(iii), for testing for pesticides, fungicides, or growth regulators, 70 - 130% recovery of the true value;
 - iii. For Acequinocyl, Bifenthrin, Fludioxomil, Hexythiazox, Imazalil, Naled, Imidacloprid, and Spiroxamine, 70 – 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10);

- iv. For residual solvents except propane and butane, 70 - 130% recovery of the true value;
 - v. For propane or butane, 60 - 140% recovery of the true value;
 - vi. For herbicides and mycotoxins, 70 – 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10); and
 - vii. For heavy metal testing, 80 - 120% recovery of the true value;
3. The relative percent difference for the laboratory control sample and duplicate for each analyte, calculated on the basis of concentration or amount, is no more than 20%; and
4. A matrix spike:
- a. Is prepared \pm 20% of, as applicable, the maximum allowable concentrations for an analyte in Table 3.1 or the mid-level standard for potency testing;
 - b. Is carried through all stages of sample preparation and included with each analytical batch of up to 20 samples for each matrix type; and
 - c. Has either the following acceptance criteria or acceptance criteria within statistically derived limits developed by the laboratory:
 - i. For potency testing, 80 - 120% recovery of true value or according to control limits derived according to R9-17-404.05(B)(10);
 - ii. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10); and
 - iii. For heavy metal testing, 75 - 125% recovery of the true value.
- L.** A technical laboratory director shall ensure that:
- 1. Except as provided in subsection (P), for potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by mass spectrometry, the relative intensities of the characteristic ions agrees within 30% of the relative intensities of these ions in the reference spectrum; and
 - 2. For heavy metal testing, the intensity of each internal standard is monitored for each analysis to ensure that the intensity does not vary more than \pm 30%, with respect to the intensity of the internal standard during the initial calibration specified in subsection (F).
- M.** A technical laboratory director shall ensure that the resolution of chromatographic peaks in potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by a method other than mass spectrometry is maintained so that the height of the valley between the two chromatographic peaks is less than 50% of the average of the two peak heights.
- N.** A technical laboratory director shall ensure that confirmation for testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by a method other than mass spectrometry:
- 1. Is performed using:
 - a. A second column:

- i. That has a stationary phase dissimilar to the stationary phase in the primary column, and
 - ii. From which the analyte is eluted in a different order than from the primary column;
 - b. A different instrument type, such as gas chromatography followed by mass spectrometry;
 - c. Gas chromatography with two different types of detectors; or
 - d. Other recognized confirmation techniques;
 2. Meets the applicable criteria in subsections (D) through (M); and
 3. Includes as part of the confirmation of the analyte:
 - a. An evaluation of the agreement of the quantitative values of the results from both methods of testing; and
 - b. Determination of the relative percent difference between the values.
- O.** If the relative percent difference between the values obtained according to subsection (N) is more than 40%, a technical laboratory director shall ensure that:
1. The chromatograms are checked to see if an obviously overlapping peak is causing an erroneously high result, and the chromatographic conditions are reviewed; and
 2. Either:
 - a. If a problem is found with one of the tests, the result from the other test is reported; and
 - b. If there is no evidence of a chromatographic problem, the higher result is reported.
- P.** A technical laboratory director may release testing results that are scientifically valid and defensible, according to R9-17-404.06(B)(3), with the following data qualifier notations if:
1. The target analyte detected in the calibration blank required in subsection (F)(1)(c) or the method blank specified in subsection (K)(1) is at or above the limit of quantitation, but the sample result:
 - a. For potency testing, is below the limit of quantitation – B1; or
 - b. When testing for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents, is below the maximum allowable concentration in Table 3.1 for the analyte – B2;
 2. The limit of quantitation and the sample results were adjusted to reflect sample dilution - D1;
 3. The relative intensity of a characteristic ion in a sample analyte exceeded the acceptance criteria in subsection (L)(1) with respect to the reference spectra, indicating interference – I1;
 4. When testing for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents, the percent recovery of a laboratory control sample is greater than the acceptance limits in subsection (K)(2)(c), but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 for the analytes in the sample – L1;
 5. The recovery from the matrix spike in subsection (K)(4) was:
 - a. High, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M1,
 - b. Low, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance

criteria – M2, or

- c. Unusable because the analyte concentration was disproportionate to the spike level, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M3;
 6. The analysis of a spiked sample required a dilution such that the spike recovery calculation does not provide useful information, but the recovery from the associated laboratory control sample in subsection (K)(2) was within acceptance criteria – M4;
 7. The analyte concentration was determined by the method of standard addition, in which the standard is added directly to the aliquots of the analyzed sample – M5;
 8. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) – N1;
 9. The relative percent difference for the laboratory control sample and duplicate exceeded the limit in subsection (K)(3), but the recovery in subsection (K)(2) was within acceptance criteria – R1;
 10. The relative percent difference for a sample and duplicate exceeded the limit in subsection (O) – R2; or
 11. The recovery from continuing calibration verification standards exceeded the acceptance limits in subsection (J)(1)(b), but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 for the analytes in the sample – V1.
- Q.** A technical laboratory director shall include in the final report of testing, according to R9-17-404.06(B)(3)(d)(iii), the following data qualifier notations if:
1. Sample integrity was not maintained – Q1;
 2. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices – Q2; or
 3. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 – Q3.
- R.** For batch analysis of samples to determine potency, a technical laboratory director may check precision by using either a duplicate laboratory control sample or a duplicate sample prepared from the medical marijuana or marijuana product being tested, according to requirements in subsections (K)(2) and (3).
- S.** A technical laboratory director shall ensure that the reporting units for:
1. Pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents are in parts per million (ppm); and
 2. Potency are:
 - a. In either:
 - i. Percent (w/w) relative to the bulk plant material or marijuana product, as applicable: or
 - ii. Number of milligrams per designated unit; and
 - b. For:
 - i. Total tetrahydrocannabinol, the sum of tetrahydrocannabinolic acid (THC-A), multiplied by

- 0.877, and delta-9-tetrahydrocannabinol (Δ^9 -THC); and
- ii. Total cannabidiol, the sum of cannabidiolic acid (CBD-A), multiplied by 0.877, and cannabidiol (CBD).

R9-17-404.04. Method Criteria and References for Analyses for Microbial Contaminants

- A.** To perform laboratory testing for the microbial contaminants in Table 3.1, a laboratory shall use an applicable method:
1. Described in:
 - a. The Bacteriological Analytical Manual (BAM), 2019, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.fda.gov/food/laboratory-methods-food/bacteriological-analytical-manual-bam>; or
 - b. AOAC Official Methods of Analysis, 21st Edition, 2019, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.aoac.org/official-methods-of-analysis-21st-edition-2019>; and
 2. Validated according to, as applicable:
 - a. AOAC - Appendix J: Guidelines for Validation of Microbiological Methods for Food and Environmental Surfaces, 2012, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_j.pdf;
 - b. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_k.pdf; or
 - c. ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1_Guideline.pdf or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology>.
- B.** A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product for microbial contaminants are:
1. Set up, calibrated, and verified according to:
 - a. Manufacturer’s acceptance criteria; and
 - b. Requirements for the specific method, as specified in subsection (A)(1)(a) or (b), as applicable;
 2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, 6.3: Facilities and Environmental Conditions, 6.4: Equipment, 7.7: Ensuring the Validity of Results, and Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments,

and is available at <https://www.aoac.org/aoac-accreditation-guidelines-for-laboratories-alacc>; and

3. Applicable for the analytes to be tested.

C. A technical laboratory director shall ensure that:

1. The organisms required as controls are checked, as appropriate for their application:

- a. To ensure there is no contamination with other organisms,
- b. For verification of biochemical or other biological characteristics, and
- c. To ascertain the number of organisms; and

2. Documentation is maintained of the:

- a. Checking required in subsection (C)(1), and
- b. Traceability of the organisms in subsection (C)(1) from date of possession.

D. A technical laboratory director shall ensure that for an initial demonstration of capability:

1. Before implementing a method, at least four replicate reference samples for each analyte are:

- a. Spiked with control organisms at an amount allowing for quantitation, and
- b. Taken through the entire sample preparation and analysis process;

2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and

3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.

E. A technical laboratory director shall ensure that each batch of media or reagent:

1. Is examined to ensure it is suitable for use;

2. If externally prepared, has a certificate of meeting quality control standards, issued by the manufacturer;

3. If internally prepared, has documentation of:

- a. Instructions for preparation;
- b. Traceability to dehydrated media or reagent concentrate;
- c. Sterility, including, as applicable:
 - i. Autoclave records showing the date, run number, autoclave identifier, nature of the material being autoclaved, time at desired temperature, and name of the laboratory agent starting the autoclave; and
 - ii. For another sterilization method, records showing the date, type of sterilization method, nature of the material being sterilized, confirmation of the sterilization as applicable to the method, and name of the laboratory agent initiating the sterilization method;
- d. Checking for the following, as applicable, including the name of the laboratory agent who performed the check and date of the check:

- i. pH,
 - ii. Appearance,
 - iii. Fill volumes,
 - iv. Batch size, and
 - v. Quantity; and
 4. Undergoes quality control verification, as applicable, including the name of the laboratory agent who performed the verification and date of verification, for:
 - a. The ability of media to sustain growth of the organism for which the media will be used;
 - b. If applicable, the ability of media to select for specific organisms or characteristics of an organism;
 - c. The ability of a reagent to function as intended; and
 - d. Sterility of the media or reagent before use.
- F.** If test kits or other identification systems are used for laboratory testing, a technical laboratory director shall ensure that:
1. Each lot of test kits or other identification systems undergoes quality control verification, including the name of the laboratory agent who performed the verification and date of verification, for:
 - a. Having a certificate of meeting quality control standards, issued by the manufacturer; and
 - b. Passing a visual inspection of physical characteristics;
 2. If an identification system is intended to speciate organisms, the identification system is tested with at least one control organism appropriate for the identification system to confirm acceptability; and
 3. For testing using ELISA:
 - a. The ELISA testing calibration curve has at least four standards;
 - b. The standards in subsection (F)(3)(a) bracket the maximum allowable contaminants in Table 3.1 for the analyte; and
 - c. For linear and non-linear calibration models, the coefficient of determination (r^2) is greater than or equal to 0.99.
- G.** A technical laboratory director shall ensure that:
1. For testing for *Aspergillus* with a plating method:
 - a. One of the following plating media is used:
 - i. Malt extract agar, BAM Media M182;
 - ii. Dichloran rose bengal chloramphenicol agar, BAM Media M183; or
 - iii. Potato dextrose agar with rose bengal and chloramphenicol; and
 - b. Petrifilm™, Simplate™, or another pre-made plate that is unsuitable for growing spreading molds is not used; and
 2. For testing for mycotoxins by any method, at least a 0.5 g sample is tested.
- H.** A technical laboratory director shall include in the final report of testing, according to R9-17-

404.06(B)(3)(d)(iii), the following data qualifier notations if:

1. The limit of quantitation and the sample results were adjusted to reflect sample dilution - D1;
2. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) – N1;
3. Sample integrity was not maintained – Q1;
4. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices – Q2; or
5. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 – Q3.

I. A technical laboratory director shall ensure that:

1. The reporting units for *Escherichia coli* are colony forming units per gram (CFU/g);
2. Reporting for *Salmonella* is “Detected” or “Not detected” in one gram;
3. Reporting for *Aspergillus* is “Detected” or “Not detected” in one gram; and
4. Reporting for mycotoxins includes:
 - a. Total aflatoxins in units of micrograms per kilogram ($\mu\text{g}/\text{kg}$), and
 - b. Ochratoxin A in units of micrograms per kilogram ($\mu\text{g}/\text{kg}$).

R9-17-404.05. Quality Assurance

A. An owner holding a laboratory registration certificate or applicant shall ensure that the analytical data produced at the owner’s or applicant’s laboratory are of known and acceptable precision and accuracy, as prescribed by the method criteria for each analyte in R9-17-404.03 or R9-17-404.04, and are scientifically valid and defensible.

B. An owner holding a laboratory registration certificate or applicant shall establish, implement, and comply with a written quality assurance plan that contains the following and is available at the laboratory for Department review:

1. A title page identifying the laboratory and date of review and including the technical laboratory director’s signature of approval;
2. A table of contents;
3. An organization chart or list of the laboratory personnel, including names, lines of authority, and identification of principal quality assurance personnel;
4. A copy of the current laboratory registration certificate and a list of approved parameters;
5. A statement of quality assurance objectives, including data quality objectives with precision and accuracy goals and the criteria for determining the acceptability of each testing;
6. Specifications for preservation of samples;
7. A procedure for documenting laboratory receipt of samples and tracking of samples during laboratory

testing;

8. A procedure for analytical instrument calibration, including frequency of calibration and complying with the requirements for calibration in subsection (D);
 9. A procedure for testing data reduction and validation and reporting of final results, including the identification and treatment of data outliers, the determination of the accuracy of data transcription, and all calculations;
 10. If using control limits derived by the laboratory as a basis for determining acceptance of a testing result, a procedure to ensure that the control limits are:
 - a. Statistically significant, valid, and defensible; and
 - b. Updated at least every 12 months;
 11. A statement of the frequency of all quality control checks;
 12. A statement of the acceptance criteria for all quality control checks;
 13. Preventive maintenance procedures and schedules;
 14. Assessment procedures for data acceptability, including appropriate procedures for manual integration of chromatograms and when manual integration is inappropriate;
 15. Corrective action procedures to be taken when results from analytical quality control checks are unacceptable, including steps to demonstrate the presence of any interference if the precision, accuracy, or limit of quantitation of the reported testing result is affected by the interference; and
 16. Procedures for chain-of-custody documentation, including procedures for the documentation and reporting of any deviation from the sample handling or preservation requirements.
- C.** An owner holding a laboratory registration certificate or applicant shall ensure that a laboratory's written quality assurance plan is a separate document available at the laboratory and includes all of the components required in subsection (B), but an owner or applicant may satisfy the components required in subsections (B)(3) through (15) through incorporating by reference provisions in separate documents, such as standard operating procedures.
- D.** An owner holding a laboratory registration certificate or applicant shall:
1. Have available at the laboratory all methods, equipment, reagents, and supplies necessary for the testing for which the owner or applicant is approved or is requesting approval;
 2. Use only reagents of a grade equal to or greater than that required by the method criteria in R9-17-404.03 or R9-17-404.04, and document the use of the reagents;
 3. Maintain and require each laboratory agent performing testing on medical marijuana or a marijuana product to comply with a complete and current standard operating procedure that meets the requirements for each method, as specified in R9-17-404.03 or R9-17-404.04, which shall include at least:
 - a. A description of all procedures to be followed when the method is performed;
 - b. A list of the concentrations for calibration standards, check standards, and spikes;

- c. Requirements for instrumental conditions and set up;
 - d. A requirement for frequency of calibration;
 - e. The quantitative methods to be used to calculate the final concentration of an analyte in samples, including any factors used in the calculations and the calibration algorithm used; and
 - f. Requirements for preventative maintenance;
4. Calibrate each instrument as required by the standard operating procedure, as specified in R9-17-404.03 or R9-17-404.04, for which the equipment is used;
 5. Maintain calibration documentation, including documentation that demonstrates the calculations performed using each calibration model;
 6. Develop, document, and maintain a current limit of quantitation, as specified in R9-17-404.03, for each compliance parameter for each instrument;
 7. For each parameter and analyte tested at the laboratory use the quality control acceptance criteria specified according to R9-17-404.03, R9-17-404.04, and Table 3.1;
 8. Discard or segregate all expired standards or reagents;
 9. Maintain a record showing the traceability of reagents; and
 10. Ensure that a calibration model is not used or changed to avoid necessary instrument maintenance.
- E.** Except as provided in subsection (F), an owner holding a laboratory registration certificate or applicant shall ensure that each laboratory standard operating procedure is a separate document available at the laboratory and includes all of the components required in subsection (D)(3).
- F.** An owner holding a laboratory registration certificate or applicant may satisfy the components required in subsections (D)(3)(e) and (f) through incorporating by reference provisions in separate documents, such as other standard operating procedures.

R9-17-404.06. Operations

- A.** A technical laboratory director shall ensure that:
1. A sample of medical marijuana or a marijuana product accepted at the technical laboratory director's laboratory is analyzed:
 - a. Either:
 - i. At the laboratory, or
 - ii. For testing of parameters or analytes that the laboratory is not approved by the Department to conduct, at another laboratory with an approval for testing issued by the Department; and
 - b. As received;
 2. If an instrument or equipment used for testing medical marijuana or a marijuana product has a mechanism to track any changes made to testing results, the tracking mechanism is installed and activated;
 3. The facility and utilities required to operate equipment and perform testing of medical marijuana or

marijuana products are maintained;

4. Environmental controls are maintained within the laboratory to ensure that laboratory environmental conditions do not affect analytical results beyond quality control limits established for the methods performed at the laboratory;
5. Storage, handling, and disposal of hazardous materials at the laboratory are in accordance with all state and federal regulations;
6. The laboratory complies with all applicable federal, state, and local occupational safety and health regulations; and
7. The following information is maintained for all laboratory agents providing supervisory, quality assurance, or analytical functions related to testing of medical marijuana or a marijuana product:
 - a. A summary of each laboratory agent's education and professional experience;
 - b. Documentation of each laboratory agent's applicable certifications and specialized training;
 - c. Information related to the laboratory agent's registry identification card;
 - d. Documentation of each laboratory agent's review of the quality assurance plan required under R9-17-404.05(B) and the methods and laboratory standard operating procedures for all testing of marijuana or marijuana products performed by the laboratory agent or for which the laboratory agent has supervisory or quality assurance responsibility;
 - e. Documentation of each laboratory agent's completion of training on the use of equipment and of proper laboratory technique, including the name of the laboratory agent, the name of the instructor, the duration of the training, and the date of completion of the training;
 - f. Documentation of each laboratory agent's completion of training classes, continuing education courses, seminars, and conferences that relate to the testing procedures used by the laboratory agent for testing of marijuana or marijuana products;
 - g. Documentation of each laboratory agent's completion of initial demonstration of capability, as required in R9-17-404.03(D)(3) or R9-17-404.04(D)(3), for each approved method performed by the laboratory agent;
 - h. Documentation of each laboratory agent's performance of proficiency testing or accuracy testing, as applicable; and
 - i. Documentation of each laboratory agent's completion of training related to instrument calibration that includes:
 - i. Instruction on each calibration model that the laboratory agent will use or for which the laboratory agent will review data;
 - ii. For each calibration model in subsection (A)(7)(i), description of the specific aspects of the calibration model that might compromise the data quality, such as detector saturation, lack of detector sensitivity, the calibration model's not accurately reflecting the calibration points,

inappropriate extension of the calibration range, weighting factors, and dropping of mid-level calibration points without justification; and

iii. Instruction that a calibration model shall not be used or changed to avoid necessary instrument maintenance.

B. A technical laboratory director shall ensure that:

1. A testing record for marijuana or marijuana products contains:
 - a. Sample information, including the following:
 - i. A unique sample identification assigned at the laboratory;
 - ii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the amount, strain, and batch number;
 - iii. The sample collection date and time; and
 - iv. The type of testing to be performed, including whether the testing is to satisfy the requirement in R9-17-317.01(A) or for a dispensary's information only;
 - b. A picture of the sample as submitted;
 - c. The name and registry identification number of the dispensary, qualifying patient, or designated caregiver submitting the sample to the laboratory;
 - d. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;
 - e. The date and time of receipt of the sample at the laboratory;
 - f. The name and registry identification number of the laboratory agent who received the sample at the laboratory;
 - g. The dates and times of testing, including the date and time of each critical step;
 - h. Whether testing results related to a sample were changed;
 - i. If testing results related to a sample were changed, what was changed, the name of the laboratory agent who changed the testing results, the time and date the data were changed, and why the testing results were changed;
 - j. If testing results were changed due to retesting:
 - i. What was used or done to the sample, and
 - ii. The original and changed testing results;
 - k. The actual results of testing, including all raw data, work sheets, and calculations performed;
 - l. The actual results of quality control data validating the testing results, including the calibration and calculations performed;
 - m. The name of each laboratory agent who performed the testing; and
 - n. A copy of the final report;
2. A testing result for medical marijuana or a marijuana product that is known to be inaccurate is not

reported; and

3. Except as specified in subsection (C), a final report of testing of marijuana or marijuana products contains:
 - a. The name, address, and telephone number of the laboratory;
 - b. The registry identification number assigned to the laboratory by the Department;
 - c. Actual scientifically valid and defensible results of testing of a sample of medical marijuana or a marijuana product in appropriate units of measure, obtained in accordance with R9-17-404.03, R9-17-404.04, and the quality assurance plan;
 - d. As applicable:
 - i. A statement that testing results were obtained according to requirements in the quality assurance plan in R9-17-404.05, in the applicable standard operating procedure, and in R9-17-404.03 or R9-17-404.04;
 - ii. A description of any variances from the requirements in the quality assurance plan in R9-17-404.05, the applicable standard operating procedure, R9-17-404.03, or R9-17-404.04 made to ensure scientifically valid and defensible testing results, and the reason for the variance; or
 - iii. A qualifier according to R9-17-404.03(P) or (Q);
 - e. A list of each method used to obtain the reported results;
 - f. Sample information, including the following:
 - i. The unique sample identification assigned at the laboratory;
 - ii. A picture of the sample as submitted;
 - iii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the amount, strain and batch number;
 - iv. The sample collection date and time;
 - v. The name and registry identification number of the dispensary, laboratory, qualifying patient, or designated caregiver submitting the sample to the laboratory; and
 - vi. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;
 - g. The date of testing for each parameter reported;
 - h. The date of the final report; and
 - i. The technical laboratory director's or designee's signature.
- C. If a sample of medical marijuana or a marijuana product accepted at a laboratory is analyzed at another laboratory, as allowed according to R9-17-404.06(A)(1)(a)(ii), a technical laboratory director shall ensure that the final report of testing required in subsection (B)(3) includes a copy of the final report of testing from each laboratory to which the laboratory accepting the sample from a dispensary sent a portion of the sample for testing of parameters or analytes that the laboratory is not approved by the Department to conduct.

R9-17-404.07. Adding or Removing Parameters for Testing

- A.** During the term of a laboratory registration certificate, an owner may request to have one or more parameters:
1. Added to the laboratory registration certificate, or
 2. Removed from the laboratory registration certificate.
- B.** To request a change to one or more parameters, an applicant shall submit to the Department:
1. The following information in a Department-provided format:
 - a. The name, address, and telephone number of the applicant;
 - b. The name, address, and telephone number of the laboratory for which the change is requested;
 - c. If requesting the removal of a parameter, identification of the parameter to be removed;
 - d. If requesting the addition of a parameter:
 - i. The analyte to be tested for,
 - ii. The instruments and equipment to be used for testing,
 - iii. The software to be used at the laboratory for instrument control and data reduction interpretation,
and
 - iv. The limit of quantitation, if applicable;
 - e. An attestation that the information provided to the Department to apply for the addition of a parameter is true and correct; and
 - f. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
 2. The following for each parameter requested to be added:
 - a. A copy of current accreditation;
 - b. A copy of a proficiency testing report, if applicable, or accuracy testing documentation; and
 - c. A copy of the standard operating procedure; and
 3. If applicable, any changes to the quality assurance plan in R9-17-404.05(B) made due to the addition or removal of the parameter.
- C.** The Department may conduct a laboratory inspection during the substantive review period for a request to have one or more parameters added to a laboratory registration certificate.
- D.** The Department shall process a request to have one or more parameters added to a laboratory registration certificate as provided in R9-17-107.

R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card

To obtain a laboratory agent registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the owner shall submit to the Department the following for each laboratory agent:

1. An application in a Department-provided format that includes:
 - a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The laboratory agent's residence address and mailing address;
 - c. The county where the laboratory agent resides;
 - d. The laboratory agent's date of birth;
 - e. The identifying number on the applicable card or document in subsection (5)(a) through (e);
 - f. The name and registry identification number of the laboratory; and
 - g. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
2. An attestation signed and dated by the laboratory agent that the laboratory agent:
 - a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, and
 - b. Will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity, or management company that the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver who the laboratory has a direct or indirect familial or financial relationship with;
3. One of the following:
 - a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;
4. A statement in a Department-provided format, signed by the laboratory agent, pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of the laboratory agent's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the laboratory agent's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
6. A current photograph of the laboratory agent;
7. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:

- a. The laboratory agent's fingerprints on a fingerprint card that includes:
 - i. The laboratory agent's first name; middle initial, if applicable; and last name;
 - ii. The laboratory agent's signature;
 - iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
 - iv. The laboratory agent's address;
 - v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
 - vi. The laboratory agent's date of birth;
 - vii. The laboratory agent's Social Security number;
 - viii. The laboratory agent's citizenship status;
 - ix. The laboratory agent's gender;
 - x. The laboratory agent's race;
 - xi. The laboratory agent's height;
 - xii. The laboratory agent's weight;
 - xiii. The laboratory agent's hair color;
 - xiv. The laboratory agent's eye color; and
 - xv. The laboratory agent's place of birth; or
 - b. If the laboratory agent's fingerprints and information required in subsection (7)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
8. The applicable fee in R9-17-102 for applying for a laboratory agent registry identification card.

R9-17-406. Submitting an Application to Renew a Laboratory Agent's Registry Identification Card

To renew a laboratory agent's registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the laboratory shall submit to the Department, at least 30 calendar days before the expiration of the laboratory agent's registry identification card, but no more than 90 days before the expiration date of the laboratory's agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
 - a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The laboratory agent's residence address and mailing address;
 - c. The county where the laboratory agent resides;

- d. The laboratory agent's date of birth;
 - e. The registry identification number on the laboratory agent's current registry identification card;
 - f. The identifying number on the applicable card or document in subsection (6)(a) through (e);
 - g. The name and registry identification number of the laboratory; and
 - h. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
2. If the laboratory agent's name in subsection (1)(a) is not the same name as on the laboratory agent's current registry identification card, one of the following with the laboratory agent's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the laboratory agent's U.S. passport;
 3. An attestation signed and dated by the laboratory agent that the laboratory agent:
 - a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. Will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity or management company the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver the laboratory has a direct or indirect familial or financial relationship with;
 4. One of the following:
 - a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;
 5. A statement in a Department-provided format signed by the laboratory agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 6. A copy of the laboratory agent's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the laboratory agent's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;

7. A current photograph of the laboratory agent;
8. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
 - a. The laboratory agent's fingerprints on a fingerprint card that includes:
 - i. The laboratory agent's first name; middle initial, if applicable; and last name;
 - ii. The laboratory agent's signature;
 - iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
 - iv. The laboratory agent's address;
 - v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
 - vi. The laboratory agent's date of birth;
 - vii. The laboratory agent's Social Security number;
 - viii. The laboratory agent's citizenship status;
 - ix. The laboratory agent's gender;
 - x. The laboratory agent's race;
 - xi. The laboratory agent's height;
 - xii. The laboratory agent's weight;
 - xiii. The laboratory agent's hair color;
 - xiv. The laboratory agent's eye color; and
 - xv. The laboratory agent's place of birth; or
 - b. If the laboratory agent's fingerprints and information required in subsection (8)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
9. The applicable fee in R9-17-102 for applying to renew a laboratory agent's registry identification card.

R9-17-407. Inventory Control System

- A.** A laboratory shall not accept submissions of marijuana or marijuana products for testing from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.
- B.** A technical laboratory director laboratory shall designate in writing a laboratory agent who has oversight of the laboratory's marijuana inventory control system.
- C.** A technical laboratory director shall establish and implement an inventory control system for the laboratory's medical marijuana and marijuana products that documents:
 1. The following amounts in appropriate units:

- a. Each day's beginning inventory of medical marijuana and marijuana products,
 - b. Medical marijuana and marijuana products accepted for testing,
 - c. The portions of a sample of medical marijuana or a marijuana product removed for testing with the name of the laboratory agent removing each portion,
 - d. Medical marijuana and marijuana products transferred to or from another laboratory for testing of parameters or analytes that the laboratory receiving a sample from a dispensary is not approved by the Department to conduct,
 - e. Medical marijuana and marijuana products transferred to another laboratory at the request of a dispensary according to R9-17-317.01(C),
 - f. Medical marijuana or marijuana products that were disposed of, and
 - g. The day's ending medical marijuana and marijuana products inventory;
2. The chain of custody for each sample of medical marijuana or a marijuana product submitted to the laboratory for testing;
 3. Any damage to a sample's container or possible tampering;
 4. As applicable, for submissions of marijuana and marijuana products for testing:
 - a. A description of the submitted marijuana or marijuana products including the amount, strain and batch number;
 - b. The name and registry identification number of the dispensary that submitted the marijuana or marijuana products;
 - c. The name and registry identification number of the dispensary agent that submitted the marijuana or marijuana products;
 - d. The name and registry identification number of the qualifying patient that submitted the marijuana or marijuana products;
 - e. The name and registry identification number of the designated caregiver that submitted the marijuana or marijuana products;
 - f. The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the laboratory;
 - g. The date of acquisition;
 - h. The date of each test; and
 - i. The testing results; and
 5. For disposal of the remaining sample of medical marijuana or a marijuana product after testing:
 - a. The amount and description of the medical marijuana or marijuana product being disposed of;
 - b. The name and registry identification number of the dispensary submitting the sample,
 - c. Date of disposal;
 - d. Method of disposal; and

- e. Name and registry identification number of the laboratory agent responsible for the disposal.
- D.** The individual designated in subsection (B) shall conduct and document an audit of the laboratory's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
 - 1. If the audit identifies a reduction in the amount of marijuana or marijuana products in the laboratory's inventory not due to documented causes, the technical laboratory director shall determine where the loss has occurred and take and document corrective action.
 - 2. If the reduction in the amount of marijuana or marijuana products in the laboratory's inventory is due to suspected criminal activity by a laboratory agent, the technical laboratory director shall report the laboratory agent to the Department and to the local law enforcement authorities and document the report.
- E.** A laboratory shall:
 - 1. Maintain the documentation required in subsections (C) and (D) at the laboratory for at least five years after the date on the document, and
 - 2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

R9-17-408. Security

- A.** Except as provided in R9-17-404(8), a laboratory shall ensure that access to the area of the laboratory where marijuana or marijuana products are being tested or stored for testing is limited to a laboratory's owners and authorized laboratory agents.
- B.** A laboratory agent may transport marijuana or marijuana products submitted for testing to a laboratory.
- C.** Before transportation to a laboratory, a laboratory agent shall:
 - 1. Complete a trip plan that includes:
 - a. The name of the laboratory agent in charge of transporting the marijuana or marijuana products;
 - b. The date and start time of the trip;
 - c. A description of the marijuana or marijuana products being transported;
 - d. Any anticipated stops during the trip, including the locations of the stops; and
 - e. The anticipated route of transportation; and
 - 2. Provide a copy of the trip plan in subsection (C)(1) to the laboratory.
- D.** During transportation to the laboratory, a laboratory agent shall:
 - 1. Carry a copy of the trip plan in subsection (C)(1) with the laboratory agent for the duration of the trip;
 - 2. Use a vehicle without any medical marijuana identification;
 - 3. Have a means of communication with the laboratory; and
 - 4. Ensure that the marijuana or marijuana products are not visible.
- E.** After transportation, a laboratory agent shall enter the end time of the trip and any changes to the trip plan on

the trip plan required in subsection (C)(1).

- F.** If a dispensary agent transports medical marijuana or a marijuana product to a laboratory for testing, the laboratory shall require that a copy of the trip plan be provided by the dispensary before accepting the medical marijuana or marijuana product for testing.
- G.** A laboratory shall:
1. Maintain the documents required in subsections (C)(2), (E), and (F); and
 2. Provide a copy of the documents required in subsections (C)(2), (E), and (F) to the Department for review upon request.
- H.** To prevent unauthorized access to marijuana or marijuana products at the laboratory for testing, the laboratory shall have the following:
1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:
 - a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device;
 - b. Exterior lighting to facilitate surveillance;
 - c. Electronic monitoring including:
 - i. At least one 19-inch or greater call-up monitor;
 - ii. A video printer capable of immediately producing a clear still photo from any video camera image;
 - iii. Video cameras:
 - (1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building; and
 - (2) Having a recording resolution of at least 704 x 480 or the equivalent;
 - iv. A video camera in each area of the laboratory where marijuana or marijuana products are being tested or stored for testing capable of identifying any activity occurring within the area in low light conditions;
 - v. Storage of video recordings from the video cameras for at least 30 calendar days;
 - vi. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
 - vii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and
 - d. Panic buttons in the interior of each building; and
 2. Policies and procedures that:
 - a. Restrict access to the areas of the laboratory that contain marijuana or marijuana products and, if

- applicable, to authorized individuals only;
- b. Provide for the identification of authorized individuals; and
- c. Prevent loitering.

R9-17-409. Physical Plant

- A.** A laboratory shall ensure that designated storage areas for marijuana or marijuana products or materials used in direct contact with marijuana or marijuana products are:
 - 1. Separate from storage areas for toxic or flammable materials; and
 - 2. Maintained in a manner to prevent:
 - a. Microbial contamination and proliferation, and
 - b. Contamination or infestation by insects or rodents.
- B.** A laboratory shall ensure that:
 - 1. Storage areas are designated for:
 - a. Medical marijuana and marijuana products awaiting testing;
 - b. Reagents, standards, and other testing relates chemicals or materials; and
 - c. The remaining portions of tested medical marijuana and marijuana products retained according to R9-17-404(5)(c)(vi);
 - 2. Designated storage areas are monitored to ensure that a:
 - a. Room temperature storage area is maintained between 20°C and 28°C,
 - b. Refrigerated storage area is maintained between 2°C and 8°C, and
 - c. Freezer storage area is maintained at less than -20°C;
 - 3. A storage area for the storage of medical marijuana or marijuana product awaiting testing is labelled to indicate the temperature range and types of medical marijuana or marijuana products to be stored in the storage area;
 - 4. Medical marijuana or a marijuana product awaiting testing is stored at an appropriate temperature, as specified on the packaged sample;
 - 5. Reagents, standards, and other testing relates chemicals or materials are stored according to manufacturer's directions; and
 - 6. The remaining portions of tested medical marijuana and marijuana products are stored in a refrigerated storage area or a freezer storage area to reduce microbial proliferation.
- C.** A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for microbial contaminants is maintained in a manner to prevent exposure of the medical marijuana or marijuana product to external microbial contaminants.
- D.** A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents is maintained in a

manner to prevent exposure of the medical marijuana or marijuana product to external contamination.

R9-17-410. Denial or Revocation of a Laboratory Registration Certificate

A. The Department shall deny an application for a laboratory registration certificate if:

1. The physical address of the laboratory is within 500 feet of a private school or a public school that existed before the date the laboratory submitted the initial laboratory registration certificate application;
2. An owner:
 - a. Has been convicted of an excluded felony offense, or
 - b. Is under 21 years of age;
3. The application or the laboratory does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter;
4. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
6. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
7. The laboratory fails to maintain accreditation.

B. The Department may deny an application for a laboratory registration certificate if an owner of the laboratory provides false or misleading information to the Department.

C. The Department shall revoke a laboratory's registration certificate if:

1. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
2. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
3. An owner has been convicted of an excluded felony offense;
4. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
5. The laboratory fails to maintain accreditation.

D. The Department may deny an application for a laboratory registration certificate or revoke a laboratory registration certificate if the laboratory does not:

1. Comply with:
 - a. The requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - b. The provisions in a corrective action plan submitted according to R9-17-404.01(E)(2)(b); or
 2. Implement the policies and procedures or comply with the statements provided to the Department with the laboratory's application.
- E.** If the Department denies a laboratory registration certificate application, the Department shall provide notice to the applicant that includes:
1. The specific reason or reasons for the denial, and
 2. All other information required by A.R.S. § 41-1076.
- F.** If the Department revokes a laboratory registration certificate, the Department shall provide notice to the laboratory that includes:
1. The specific reason or reasons for the revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-411. Denial or Revocation of a Laboratory Agent's Registry Identification Card

- A.** The Department shall deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent does not meet the requirements in A.R.S. § 36-2801.
- B.** The Department may deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent provides false or misleading information to the Department.
- C.** The Department shall revoke a laboratory agent's registry identification card if the laboratory agent:
1. Uses marijuana, if the laboratory agent does not have a qualifying patient registry identification card;
 2. Diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; or
 3. Has been convicted of an excluded felony offense.
- D.** The Department may revoke a laboratory agent's registry identification card if the laboratory agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- E.** If the Department denies or revokes a laboratory agent's registry identification card, the Department shall provide notice to the laboratory agent and the laboratory agent's laboratory that includes:
1. The specific reason or reasons for the denial or revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Statutory Authority for Rules in 9 A.A.C. 17

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. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

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

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

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

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale

meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
 - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
 - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
 - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
 - (g) 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.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or

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

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

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

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare 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. 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.

36-2801.01. Addition of debilitating medical conditions

The public may petition the department to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in section 36-2801, paragraph 3. The department shall consider petitions in the manner required by department rule, including public notice and hearing. The department shall approve or deny a petition within one-hundred-eighty days of its submission. The approval or denial of a petition is a final decision of the department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue are vested in the superior court.

36-2803. Rulemaking; notice; testing of marijuana and marijuana products; fees

A. The department shall adopt rules:

1. Governing the manner in which the department considers petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in section 36-2801, paragraph 3, including public notice of, and an opportunity to comment in a public hearing on, petitions.

2. Establishing the form and content of registration and renewal applications submitted under this chapter.

3. Governing the manner in which the department considers applications for and renewals of registry identification cards.

4. Governing nonprofit medical marijuana dispensaries to protect against diversion and theft without imposing an undue burden on nonprofit medical marijuana dispensaries or compromising the confidentiality of cardholders, including:

(a) The manner in which the department considers applications for and renewals of registration certificates.

(b) Minimum oversight requirements for nonprofit medical marijuana dispensaries.

(c) Minimum recordkeeping requirements for nonprofit medical marijuana dispensaries.

(d) Minimum security requirements for nonprofit medical marijuana dispensaries, including requirements to protect each registered nonprofit medical marijuana dispensary location by a fully operational security alarm system.

(e) Procedures for suspending or revoking the registration certificate of nonprofit medical marijuana dispensaries that violate this chapter or the rules adopted pursuant to this section.

5. Establishing application and renewal fees for registry identification cards, nonprofit medical marijuana dispensary registration certificates and independent third-party laboratory certificates, according to the following:

(a) The total amount of all fees shall generate revenues that are sufficient to implement and administer this chapter, except that fee revenue may be offset or supplemented by private donations.

(b) Nonprofit medical marijuana dispensary application fees may not exceed \$5,000.

(c) Nonprofit medical marijuana dispensary renewal fees may not exceed \$1,000.

(d) The total amount of revenue generated from nonprofit medical marijuana dispensary application and renewal fees, registry identification card fees for nonprofit medical marijuana dispensary agents and independent third-party laboratory agents and application and renewal fees for independent third-party

laboratories shall be sufficient to implement and administer this chapter, including the verification system, except that the fee revenue may be offset or supplemented by private donations.

(e) The department may establish a sliding scale of patient application and renewal fees based on a qualifying patient's household income.

(f) The department may consider private donations under section 36-2817 to reduce application and renewal fees.

B. The department of health services shall adopt rules that require each nonprofit medical marijuana dispensary to display in a conspicuous location a sign that warns pregnant women about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report. The rules shall include the specific warning language that must be included on the sign. The cost and display of the sign required by rule shall be borne by the nonprofit medical marijuana dispensary. The rules shall also require each certifying physician to attest that the physician has provided information to each qualifying female patient that warns about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report.

C. The department is authorized to adopt the rules set forth in subsections A and B of this section and shall adopt those rules pursuant to title 41, chapter 6.

D. The department of health services shall post prominently on its public website a warning about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report.

E. Beginning November 1, 2020, before selling or dispensing marijuana or marijuana products to registered qualified patients or registered designated caregivers, nonprofit medical marijuana dispensaries shall test marijuana and marijuana products for medical use to determine unsafe levels of microbial contamination, heavy metals, pesticides, herbicides, fungicides, growth regulators and residual solvents and confirm the potency of the marijuana to be dispensed.

F. Beginning November 1, 2020, nonprofit medical marijuana dispensaries shall:

1. Provide test results to a registered qualifying patient or designated caregiver immediately on request.
2. Display in a conspicuous location a sign that notifies patients of their right to receive the certified independent third-party laboratory test results for marijuana and marijuana products for medical use.

G. The department shall adopt rules to certify and regulate independent third-party laboratories that analyze marijuana cultivated for medical use. The department shall establish certification fees for laboratories pursuant to subsection A of this section. In order to be certified as an independent third-party laboratory that is allowed to test marijuana and marijuana products for medical use pursuant to this chapter, an independent third-party laboratory:

1. Must meet requirements established by the department, including reporting and health and safety requirements.
2. May not have any direct or indirect familial or financial relationship with or interest in a nonprofit medical marijuana dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state.
3. Must have a quality assurance program and standards.
4. Must have an adequate chain of custody and sample requirement policies.
5. Must have an adequate records retention process to preserve records.

6. Must establish procedures to ensure that results are accurate, precise and scientifically valid before reporting the results.
 7. Must be accredited by a national or international accreditation association or other similar accrediting entity, as determined by the department.
 8. Must establish policies and procedures for disposal and reverse distribution of samples that are collected by the laboratory.
- H. The department may conduct proficiency testing and remediate problems with independent third-party laboratories that are certified and regulated pursuant to this chapter. Remediation may include assessing civil penalties and suspending or revoking a laboratory's certification.

36-2803.01. New dispensary registration certificates; issuance; priority; requirements; definition

A. Beginning on April 1, 2020, the department shall issue all new nonprofit medical marijuana dispensary registration certificates in the following order of priority based on the dispensary's geographic area as described in the registration certificate application:

1. The geographic area had a registered nonprofit medical marijuana dispensary move from the geographic area and the geographic area is at least twenty-five miles from another dispensary that has been issued a dispensary registration certificate.
2. The geographic area is at least twenty-five miles from another dispensary that has been issued a dispensary registration certificate.
3. According to rule, if there are no dispensary registration certificate applications as described in paragraph 1 or 2 of this subsection.

B. If the department receives multiple applications as described in subsection A, paragraph 1 of this section from previously approved nonprofit medical marijuana dispensary locations, the department shall approve the certificate for the application that serves the most qualifying patients within five miles of the proposed dispensary location. If the department receives multiple applications as described in subsection A, paragraph 2 of this section or if there are no applications from previously approved dispensary locations, the department may issue the registration certificate by random drawing.

C. A nonprofit medical marijuana dispensary that receives a registration certificate pursuant to subsection A, paragraph 1 or 2 of this section on or after April 1, 2020 must open the dispensary at the approved location within eighteen months after the application is approved or the registration certificate becomes invalid.

D. A nonprofit medical marijuana dispensary that is issued a registration certificate pursuant to subsection A, paragraph 1 or 2 of this section may relocate only as follows:

1. If the dispensary is located within a city or town, only within that city or town.
2. If the dispensary is located within an unincorporated area, only within the unincorporated area of the county where the dispensary is located but not within twenty-five miles from another dispensary that has been issued a dispensary registration certificate.

E. For the purposes of this section, "geographic area" means a city, town or unincorporated area of a county.

36-2804. Registration and certification of nonprofit medical marijuana dispensaries

A. Nonprofit medical marijuana dispensaries shall register with the department.

B. Not later than ninety days after receiving an application for a nonprofit medical marijuana dispensary, the department shall register the nonprofit medical marijuana dispensary and issue a registration certificate and a random 20-digit alphanumeric identification number if:

1. The prospective nonprofit medical marijuana dispensary has submitted the following:

- (a) The application fee.
 - (b) An application, including:
 - (i) The legal name of the nonprofit medical marijuana dispensary.
 - (ii) The physical address of the nonprofit medical marijuana dispensary and the physical address of one additional location, if any, where marijuana will be cultivated, neither of which may be within five hundred feet of a public or private school existing before the date of the nonprofit medical marijuana dispensary application.
 - (iii) The name, address and date of birth of each principal officer and board member of the nonprofit medical marijuana dispensary.
 - (iv) The name, address and date of birth of each nonprofit medical marijuana dispensary agent.
 - (c) Operating procedures consistent with department rules for oversight of the nonprofit medical marijuana dispensary, including procedures to ensure accurate record-keeping and adequate security measures.
 - (d) If the city, town or county in which the nonprofit medical marijuana dispensary would be located has enacted zoning restrictions, a sworn statement certifying that the registered nonprofit medical marijuana dispensary is in compliance with the restrictions.
2. None of the principal officers or board members has been convicted of an excluded felony offense.
 3. None of the principal officers or board members has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.
 4. None of the principal officers or board members is under twenty-one years of age.
- C. The department may not issue more than one nonprofit medical marijuana dispensary registration certificate for every ten pharmacies that have registered under section 32-1929, have obtained a pharmacy permit from the Arizona board of pharmacy and operate within the state except that the department may issue nonprofit medical marijuana dispensary registration certificates in excess of this limit if necessary to ensure that the department issues at least one nonprofit medical marijuana dispensary registration certificate in each county in which an application has been approved.
- D. The department may conduct a criminal records check in order to carry out this section.

36-2804.01. Registration; nonprofit medical marijuana dispensary agents; independent third-party laboratory agents; notices

- A. A nonprofit medical marijuana dispensary agent or an independent third-party laboratory agent shall be registered with the department before volunteering or working at a nonprofit medical marijuana dispensary or an independent third-party laboratory.
- B. A nonprofit medical marijuana dispensary or a certified independent third-party laboratory may apply to the department for a registry identification card for a nonprofit medical marijuana dispensary agent or an independent third-party laboratory agent by submitting:
1. The name, address and date of birth of the prospective nonprofit medical marijuana dispensary agent or independent third-party laboratory agent.
 2. A nonprofit medical marijuana dispensary agent or independent third-party laboratory agent application.
 3. A statement signed by either:
 - (a) The prospective nonprofit medical marijuana dispensary agent pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(b) The prospective independent third-party laboratory agent acknowledging that registered independent third-party laboratory agents are prohibited from diverting marijuana pursuant to this chapter.

4. The application fee.

C. A registered nonprofit medical marijuana dispensary or certified independent third-party laboratory shall notify the department within ten days after a nonprofit medical marijuana dispensary agent or independent third-party laboratory agent ceases to be employed by or volunteer at the registered nonprofit medical marijuana dispensary or certified independent third-party laboratory.

D. A person who has been convicted of an excluded felony offense may not be a nonprofit medical marijuana dispensary agent or an independent third-party laboratory agent.

E. The department may conduct a criminal records check in order to carry out this section.

36-2804.02. Registration of qualifying patients and designated caregivers

A. A qualifying patient may apply to the department for a registry identification card by submitting:

1. Written certification issued by a physician within the ninety days immediately preceding the date of application.

2. The application fee.

3. An application, including:

(a) Name, mailing address, residence address and date of birth of the qualifying patient except that if the applicant is homeless no address is required.

(b) Name, address and telephone number of the qualifying patient's physician.

(c) Name, address and date of birth of the qualifying patient's designated caregiver, if any.

(d) A statement signed by the qualifying patient pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(e) A signed statement from the designated caregiver, if any, agreeing to be the patient's designated caregiver and pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(f) A designation as to who will be allowed to cultivate marijuana plants for the qualifying patient's medical use if a registered nonprofit medical marijuana dispensary is not operating within twenty-five miles of the qualifying patient's home.

B. The application for a qualifying patient's registry identification card shall ask whether the patient would like the department to notify him of any clinical studies needing human subjects for research on the medical use of marijuana. The department shall notify interested patients if it is notified of studies that will be conducted in the United States.

36-2804.03. Issuance of registry identification cards

A. Except as provided in subsection B and in section 36-2804.05, the department shall:

1. Verify the information contained in an application or renewal submitted pursuant to this chapter and approve or deny an application or renewal within ten days of receiving a completed application or renewal.

2. Issue a registry identification card to a qualifying patient and his designated caregiver, if any, within five days of approving the application or renewal. A designated caregiver must have a registry identification card for each of his qualifying patients.

3. Issue each nonprofit medical marijuana dispensary agent a registry identification card and log-in information for the verification system within five days of approving the application or renewal.

B. The department may not issue a registry identification card to a qualifying patient who is under the age of eighteen unless:

1. The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the custodial parent or legal guardian responsible for health care decisions for the qualifying patient.

2. A custodial parent or legal guardian responsible for health care decisions for the qualifying patient submits a written certification from two physicians.

3. The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

(a) Allow the qualifying patient's medical use of marijuana.

(b) Serve as the qualifying patient's designated caregiver.

(c) Control the acquisition of the marijuana, the dosage and the frequency of the medical use of marijuana by the qualifying patient.

C. A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth or insular possession of the United States that allows a visiting qualifying patient to possess or use marijuana for medical purposes in the jurisdiction of issuance has the same force and effect when held by a visiting qualifying patient as a registry identification card issued by the department, except that a visiting qualifying patient is not authorized to obtain marijuana from a nonprofit medical marijuana dispensary.

36-2804.04. Registry identification cards

A. Registry identification cards for qualifying patients and designated caregivers shall contain all of the following:

1. The name, address and date of birth of the cardholder.

2. A statement of whether the cardholder is a qualifying patient or a designated caregiver.

3. The date of issuance and expiration date of the registry identification card.

4. A random twenty-digit alphanumeric identification number containing at least four numbers and at least four letters that is unique to the cardholder.

5. If the cardholder is a designated caregiver, the random identification number of the registered qualifying patient the designated caregiver is assisting.

6. A photograph of the cardholder.

7. A clear indication of whether the cardholder has been authorized by this chapter to cultivate marijuana plants for the qualifying patient's medical use.

8. A warning to pregnant women about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report.

B. Registry identification cards for nonprofit medical marijuana dispensary agents shall contain the following:

1. The name, address and date of birth of the nonprofit medical marijuana dispensary agent.

2. A statement that the cardholder is a nonprofit medical marijuana dispensary agent.

3. The legal name of the registered nonprofit medical marijuana dispensary with which the nonprofit medical marijuana dispensary agent is affiliated.

4. A random twenty-digit alphanumeric identification number that is unique to the cardholder.
 5. The date of issuance and expiration date of the registry identification card.
 6. A photograph, if the department decides to require one.
- C. If the registry identification card of either a qualifying patient or the patient's designated caregiver does not state that the cardholder is authorized to cultivate marijuana plants, the department must give written notice to the registered qualifying patient, when the qualifying patient's registry identification card is issued, of the name and address of all registered nonprofit medical marijuana dispensaries.

36-2804.05. Denial of registry identification card

A. The department may deny an application or renewal of a qualifying patient's registry identification card only if the applicant:

1. Does not meet the requirements of section 36-2801, paragraph 15.
2. Does not provide the information required.
3. Previously had a registry identification card revoked for violating this chapter.
4. Provides false information.

B. The department may deny an application or renewal of a designated caregiver's registry identification card if the applicant:

1. Does not meet the requirements of section 36-2801, paragraph 5.
2. Does not provide the information required.
3. Previously had a registry identification card revoked for violating this chapter.
4. Provides false information.

C. The department may deny a registry identification card to a nonprofit medical marijuana dispensary agent if:

1. The agent applicant does not meet the requirements of section 36-2801, paragraph 13.
2. The applicant or dispensary did not provide the required information.
3. The agent applicant previously had a registry identification card revoked for violating this chapter.
4. The applicant or dispensary provides false information.

D. The department may conduct a criminal records check of each designated caregiver or nonprofit medical marijuana dispensary agent applicant to carry out this section.

E. The department shall notify the registered nonprofit medical marijuana dispensary in writing of the reason for denying a registry identification card to a nonprofit medical marijuana dispensary agent.

F. The department shall notify the qualifying patient in writing of the reason for denying a registry identification card to the qualifying patient's designated caregiver.

G. Denial of an application or renewal is considered a final decision of the department subject to judicial review pursuant to title 12, chapter 7, article 6. Jurisdiction and venue for judicial review are vested in the superior court.

36-2804.06. Expiration and renewal of registry identification cards and registration certificates; replacement

A. All registry identification cards and registration certificates expire two years after their date of issue.

B. A registry identification card of a nonprofit medical marijuana dispensary agent shall be canceled and the agent's access to the verification system shall be deactivated on notification to the department by a

registered nonprofit medical marijuana dispensary that the nonprofit medical marijuana dispensary agent is no longer employed by or no longer volunteers at the registered nonprofit medical marijuana dispensary.

C. The department shall issue a renewal nonprofit medical marijuana dispensary registration certificate or an independent third-party laboratory certificate within ten days after receipt of the prescribed renewal application and renewal fee from a registered nonprofit medical marijuana dispensary or independent third-party laboratory if the dispensary's registration certificate or the laboratory's certificate is not under suspension and has not been revoked.

D. If a cardholder loses a registry identification card, the cardholder shall promptly notify the department. Within five days after the notification and on payment of a \$10 fee, the department shall issue a new registry identification card with a new random identification number to the cardholder and, if the cardholder is a registered qualifying patient, to the registered qualifying patient's registered designated caregiver, if any.

E. On or before December 1, 2019, the department shall implement an electronic registry card program for registry identification cards, registration certificates, certificates and renewals. The electronic license program shall allow for the electronic verification and delivery of registry identification cards, registration certificates, certificates and renewals.

36-2804.07. Independent third-party laboratories; certification; inspection

A. Independent third-party laboratories shall be certified by the department.

B. After receiving an application for an independent third-party laboratory, the department shall certify the independent third-party laboratory and issue a certificate and a random twenty-digit alphanumeric identification number if:

1. The prospective independent third-party laboratory has submitted all of the following:

(a) The application fee.

(b) An application, that includes:

(i) The legal name of the independent third-party laboratory.

(ii) The physical address of the independent third-party laboratory, which may not be within five hundred feet of a public or private school existing before the date of the independent third-party laboratory's application.

(iii) The name, address and date of birth of the owner of the independent third-party laboratory.

(iv) The name, address and date of birth of each independent third-party laboratory agent.

(c) Policies and procedures consistent with department rules and the requirements of section 36-2803.

(d) If the city, town or county in which the independent third-party laboratory would be located has enacted zoning restrictions, a sworn statement certifying that the independent third-party laboratory is in compliance with the restrictions.

2. The independent third-party laboratory's owner and agents have not been convicted of an excluded felony offense.

3. The independent third-party laboratory's owner and agents are at least twenty-one years of age.

C. Certified independent third-party laboratories are subject to reasonable inspection by the department.

D. The department may conduct a criminal records check in order to carry out this section.

36-2806. Registered nonprofit medical marijuana dispensaries; requirements; rules; inspections; testing

- A. A registered nonprofit medical marijuana dispensary shall be operated on a not-for-profit basis. The bylaws of a registered nonprofit medical marijuana dispensary shall contain such provisions relative to the disposition of revenues and receipts to establish and maintain its nonprofit character. A registered nonprofit medical marijuana dispensary need not be recognized as tax-exempt by the internal revenue service and is not required to incorporate pursuant to title 10, chapter 19, article 1.
- B. The operating documents of a registered nonprofit medical marijuana dispensary shall include procedures for the oversight of the registered nonprofit medical marijuana dispensary and procedures to ensure accurate recordkeeping.
- C. A registered nonprofit medical marijuana dispensary shall have a single secure entrance and shall implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.
- D. A registered nonprofit medical marijuana dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the registered qualifying patients' designated caregivers or an independent third-party laboratory agent or a certified independent third-party laboratory for the purposes prescribed in this chapter and department rule.
- E. All cultivation of marijuana must take place in an enclosed, locked facility, at a physical address provided to the department during the registration process, that can be accessed only by registered nonprofit medical marijuana dispensary agents associated in the registry with the nonprofit medical marijuana dispensary.
- F. A registered nonprofit medical marijuana dispensary may acquire usable marijuana or marijuana plants from a registered qualifying patient or a registered designated caregiver only if the registered qualifying patient or registered designated caregiver receives no compensation for the marijuana.
- G. A nonprofit medical marijuana dispensary shall not allow any person to consume marijuana on the property of the nonprofit medical marijuana dispensary.
- H. Registered nonprofit medical marijuana dispensaries are subject to reasonable inspection by the department. The department shall give reasonable notice of an inspection under this subsection.
- I. Beginning November 1, 2020, registered nonprofit medical marijuana dispensaries are subject to product testing by certified independent third-party laboratories pursuant to this chapter and rules adopted pursuant to this chapter.
- J. Notwithstanding title 13, chapter 34, an employee of the department or an independent third-party laboratory agent may not be charged with or prosecuted for possession of marijuana that is cultivated for medical use as required by this chapter and the rules adopted pursuant to this chapter.

36-2806.02. Dispensing marijuana for medical use

- A. Before marijuana may be dispensed to a registered designated caregiver or a registered qualifying patient, a nonprofit medical marijuana dispensary agent must access the verification system and determine for the registered qualifying patient for whom the marijuana is intended and any registered designated caregiver transporting the marijuana to the patient, that:
1. The registry identification card presented to the registered nonprofit medical marijuana dispensary is valid.
 2. Each person presenting a registry identification card is the person identified on the registry identification card presented to the nonprofit medical marijuana dispensary agent.
 3. The amount to be dispensed would not cause the registered qualifying patient to exceed the limit on obtaining no more than two-and-one-half ounces of marijuana during any fourteen-day period.

B. After making the determinations required in subsection A, but before dispensing marijuana to a registered qualifying patient or a registered designated caregiver on a registered qualifying patient's behalf, a nonprofit medical marijuana dispensary agent must enter the following information in the verification system:

1. How much marijuana is being dispensed to the registered qualifying patient.
2. Whether it was dispensed directly to the registered qualifying patient or to the registered qualifying patient's registered designated caregiver.
3. The date and time the marijuana was dispensed.
4. The registry identification card number of the nonprofit medical marijuana dispensary and of the nonprofit medical marijuana dispensary agent who dispensed the marijuana.

36-2807. Verification system

A. Within one hundred twenty days of the effective date of this chapter, the department shall establish a secure, password-protected, web-based verification system for use on a twenty-four hour basis by law enforcement personnel, nonprofit medical marijuana dispensary agents and employers to verify registry identification cards. An employer may use the verification system only to verify a registry identification card that is provided to the employer by a current employee or by an applicant who has received a conditional offer of employment.

B. The verification system must allow law enforcement personnel and nonprofit medical marijuana dispensary agents to enter a registry identification number and verify whether the number corresponds with a current, valid identification card.

C. The system shall disclose:

1. The name of the cardholder, but must not disclose the cardholder's address.
2. The amount of marijuana that each registered qualifying patient received from nonprofit medical marijuana dispensaries during the past sixty days.

D. The verification system must include the following data security features:

1. Any time an authorized user enters five invalid registry identification numbers within five minutes, that user cannot log in to the system again for ten minutes.
2. A users log-in information shall be deactivated after five incorrect login attempts until the authorized user contacts the department and verifies the user's identity.
3. The server must reject any log-in request that is not over an encrypted connection.

36-2808. Notifications to department; civil penalty

A. A registered qualifying patient shall notify the department within ten days of any change in the registered qualifying patient's name, address, designated caregiver or preference regarding who may cultivate marijuana for the registered qualifying patient or if the registered qualifying patient ceases to have his debilitating medical condition.

B. A registered designated caregiver or nonprofit medical marijuana dispensary agent shall notify the department within ten days of any change in his name or address.

C. When a cardholder notifies the department of any changes listed in subsection A but remains eligible under this chapter, the department shall issue the cardholder a new registry identification card with new random 20-digit alphanumeric identification numbers within ten days of receiving the updated information and a ten-dollar fee. If the person notifying the department is a registered qualifying patient, the department shall also issue his registered designated caregiver, if any, a new registry identification card within ten days of receiving the updated information.

D. If the registered qualifying patient's certifying physician notifies the department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card is void upon notification by the department to the qualifying patient.

E. When a registered qualifying patient ceases to be a registered qualifying patient or changes registered designated caregiver, the department shall promptly notify the former designated caregiver that his duties and rights under this chapter as to that qualifying patient expire fifteen days after notification by the department is sent.

F. A registered qualifying patient, designated caregiver or nonprofit medical marijuana dispensary agent who fails to comply with subsection A or B is subject to a civil penalty of not more than one hundred fifty dollars.

36-2819. Fingerprinting requirements

Each person applying as a designated caregiver, a principal officer, agent or employee of a nonprofit medical marijuana dispensary, a medical marijuana dispensary agent or an independent third-party laboratory agent shall submit a full set of fingerprints to the department for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation without disclosing that the records check is related to the medical marijuana act and acts permitted by it. The department shall destroy each set of fingerprints after the criminal records check is completed.

36-2854. Rules; licensing; early applicants; fees; civil penalty; legal counsel

A. The department shall adopt rules to implement and enforce this chapter and regulate marijuana, marijuana products, marijuana establishments and marijuana testing facilities. Those rules shall include requirements for:

1. Licensing marijuana establishments and marijuana testing facilities, including conducting investigations and background checks to determine eligibility for licensing for marijuana establishment and marijuana testing facility applicants, except that:

(a) An application for a marijuana establishment license or marijuana testing facility license may not require the disclosure of the identity of any person who is entitled to a share of less than ten percent of the profits of an applicant that is a publicly traded corporation.

(b) The department may not issue more than one marijuana establishment license for every ten pharmacies that have registered under section 32-1929, that have obtained a pharmacy permit from the Arizona board of pharmacy and that operate within this state.

(c) Notwithstanding subdivision (b) of this paragraph, the department may issue a marijuana establishment license to not more than two marijuana establishments per county that contains no registered nonprofit medical marijuana dispensaries, or one marijuana establishment license per county that contains one registered nonprofit medical marijuana dispensary. Any license issued pursuant to this subdivision shall be for a fixed county and may not be relocated outside of that county.

(d) The department shall accept applications for marijuana establishment licenses from early applicants beginning January 19, 2021 through March 9, 2021. Not later than sixty days after receiving an application pursuant to this subdivision, the department shall issue a marijuana establishment license to each qualified early applicant. If the department has not adopted final rules pursuant to this section at the time marijuana establishment licenses are issued pursuant to this subdivision, licensees shall comply with the rules adopted by the department to implement chapter 28.1 of this title except those that are inconsistent with this chapter.

(e) After issuing marijuana establishment licenses to qualified early applicants, the department shall issue marijuana establishment licenses available under subdivisions (b) and (c) of this paragraph by random selection and according to rules adopted pursuant to this section. At least sixty days prior to any

random selection, the department shall prominently publicize the random selection on its website and through other means of general distribution intended to reach as many interested parties as possible and shall provide notice through an email notification system to which interested parties can subscribe.

(f) Notwithstanding subdivisions (b) and (c) of this paragraph, and no later than six months after the department adopts final rules to implement a social equity ownership program pursuant to paragraph 9 of this subsection, the department shall issue twenty-six additional marijuana establishment licenses to entities that are qualified pursuant to the social equity ownership program.

(g) Licenses issued by the department to marijuana establishments and marijuana testing facilities shall be valid for a period of two years.

2. Licensing fees and renewal fees for marijuana establishments and marijuana testing facilities in amounts that are reasonable and related to the actual cost of processing applications for licenses and renewals and that do not exceed five times the fees prescribed by the department to register or renew a nonprofit medical marijuana dispensary.

3. The security of marijuana establishments and marijuana testing facilities.

4. Marijuana establishments to safely cultivate, process and manufacture marijuana and marijuana products.

5. Tracking, testing, labeling and packaging marijuana and marijuana products, including requirements that marijuana and marijuana products be:

(a) Sold to consumers in clearly and conspicuously labeled containers that contain accurate warnings regarding the use of marijuana or marijuana products.

(b) Placed in child-resistant packaging on exit from a marijuana establishment.

6. Forms of government-issued identification that are acceptable by a marijuana establishment verifying a consumer's age and procedures related to verifying a consumer's age consistent with section 4-241. Until the department adopts final rules related to verifying a consumer's age, marijuana establishments shall comply with the proof of legal age requirements prescribed in section 4-241.

7. The potency of edible marijuana products that may be sold to consumers by marijuana establishments at reasonable levels upon consideration of industry standards, except that the rules:

(a) Shall limit the strength of edible marijuana products to no more than ten milligrams of tetrahydrocannabinol per serving or one hundred milligrams of tetrahydrocannabinol per package.

(b) Shall require that if a marijuana product contains more than one serving, it must be delineated or scored into standard serving sizes and homogenized to ensure uniform disbursement throughout the marijuana product.

8. Ensuring the health, safety and training of employees of marijuana establishments and marijuana testing facilities.

9. The creation and implementation of a social equity ownership program to promote the ownership and operation of marijuana establishments and marijuana testing facilities by individuals from communities disproportionately impacted by the enforcement of previous marijuana laws.

B. The department may:

1. Subject to title 41, chapter 6, article 10, deny any application submitted or deny, suspend or revoke, in whole or in part, any registration or license issued under this chapter if the registered or licensed party or an officer, agent or employee of the registered or licensed party does any of the following:

(a) Violates this chapter or any rule adopted pursuant to this chapter.

(b) Has been, is or may continue to be in substantial violation of the requirements for licensing or registration and, as a result, the health or safety of the general public is in immediate danger.

2. Subject to title 41, chapter 6, article 10, and unless another penalty is provided elsewhere in this chapter, assess a civil penalty against a person that violates this chapter or any rule adopted pursuant to this chapter in an amount not to exceed \$1,000 for each violation. Each day a violation occurs constitutes a separate violation. The maximum amount of any assessment is \$25,000 for any thirty-day period. In determining the amount of a civil penalty assessed against a person, the department shall consider all of the factors set forth in section 36-2816, subsection H. All civil penalties collected by the department pursuant to this paragraph shall be deposited in the smart and safe Arizona fund established by section 36-2856.

3. At any time during regular hours of operation, visit and inspect a marijuana establishment, marijuana testing facility or dual licensee to determine if it complies with this chapter and rules adopted pursuant to this chapter. The department shall make at least one unannounced visit annually to each facility licensed pursuant to this chapter.

4. Adopt any other rules not expressly stated in this section that are necessary to ensure the safe and responsible cultivation, sale, processing, manufacture, testing and transport of marijuana and marijuana products.

C. Until the department adopts rules permitting and regulating delivery by marijuana establishments pursuant to subsection D of this section, delivery is unlawful under this chapter.

D. On or after January 1, 2023, the department may, and no later than January 1, 2025 the department shall, adopt rules to permit and regulate delivery by marijuana establishments. The rules shall:

1. Require that delivery and the marijuana and marijuana products to be delivered originate from a designated retail location of a marijuana establishment and only after an order is made with the marijuana establishment by a consumer.

2. Prohibit delivery to any property owned or leased by the United States, this state, a political subdivision of this state or the Arizona board of regents.

3. Limit the amount of marijuana and marijuana products based on retail price that may be in a delivery vehicle during a single trip from the designated retail location of a marijuana establishment.

4. Prohibit extra or unallocated marijuana or marijuana products in delivery vehicles.

5. Require that deliveries be made only by marijuana facility agents in unmarked vehicles that are equipped with a global positioning system or similar location tracking system and video surveillance and recording equipment, and that contain a locked compartment in which marijuana and marijuana products must be stored.

6. Require delivery logs necessary to ensure compliance with this subsection and rules adopted pursuant to this subsection.

7. Require inspections to ensure compliance with this subsection and rules adopted pursuant to this subsection.

8. Include any other provisions necessary to ensure safe and restricted delivery.

9. Require dual licensees to comply with the rules adopted pursuant to this subsection.

E. Except as provided in subsection D of this section, the department may not permit delivery of marijuana or marijuana products under this chapter by any individual or entity. In addition to any other penalty imposed by law, an individual or entity that delivers marijuana or marijuana products in a manner that is not authorized by this chapter shall pay a civil penalty of \$20,000 per violation to the smart and safe Arizona fund established by section 36-2856. This subsection may be enforced by the attorney general.

F. All rules adopted by the department pursuant to this section shall be consistent with the purpose of this chapter.

G. The department may not adopt any rule that:

1. Prohibits the operation of marijuana establishments, either expressly or through requirements that make the operation of a marijuana establishment unduly burdensome.
2. Prohibits or interferes with the ability of a dual licensee to operate a marijuana establishment and a nonprofit medical marijuana dispensary at shared locations.

H. Notwithstanding section 41-192, the department may employ legal counsel and make an expenditure or incur an indebtedness for legal services for the purposes of:

1. Defending this chapter or rules adopted pursuant to this chapter.
2. Defending chapter 28.1 of this title or rules adopted pursuant to chapter 28.1 of this title.

I. The department shall deposit all license fees, application fees and renewal fees paid to the department pursuant to this chapter in the smart and safe Arizona fund established by section 36-2856.

J. On request, the department shall share with the department of revenue information regarding a marijuana establishment, marijuana testing facility or dual licensee, including its name, physical address, cultivation site and transaction privilege tax license number.

K. Notwithstanding any other law, the department may:

1. License an independent third-party laboratory to also operate as a marijuana testing facility.
2. Operate a marijuana testing facility.

L. The department shall maintain and publish a current list of all marijuana establishments and marijuana testing facilities by name and license number.

M. Notwithstanding any other law, the issuance of an occupational, professional or other regulatory license or certification to a person by a jurisdiction or regulatory authority outside this state does not entitle that person to be issued a marijuana establishment license, a marijuana testing facility license, or any other license, registration or certification under this chapter.

36-2855. Marijuana facility agents; registration; card; rules

A. A marijuana facility agent shall be registered with the department before working at a marijuana establishment or marijuana testing facility.

B. A person who wishes to be registered as a marijuana facility agent or renew the person's registration as a marijuana facility agent shall:

1. Submit a completed application on a form prescribed by the department and pay a nonrefundable fee that is reasonable and related to the actual cost of processing applications submitted pursuant to this section.
2. Submit evidence that the applicant holds a current level I fingerprint clearance card issued pursuant to section 41-1758.07, or submit a full set of the applicant's fingerprints for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation without disclosing that the records check is related to this chapter and acts allowed by this chapter. The department of public safety shall destroy each set of fingerprints after the criminal records check is completed.

C. If the department determines that an applicant meets the criteria for registration under this chapter and rules pursuant to this chapter, the department shall issue the applicant a marijuana facility agent card that is valid for two years.

D. A registered marijuana facility agent may be employed by or associated with any marijuana establishment or marijuana testing facility. A marijuana establishment or marijuana testing facility shall promptly notify the department when it employs or becomes associated with a new marijuana facility

agent. A marijuana facility agent shall promptly notify the department when the marijuana facility agent is employed by or becomes associated with a marijuana establishment or marijuana testing facility and when the marijuana facility agent is no longer employed by or associated with a marijuana establishment or marijuana testing facility.

E. A nonprofit medical marijuana dispensary agent of a dual licensee who has applied to be registered as a marijuana facility agent may serve as a marijuana facility agent of that dual licensee until the department has approved or rejected the agent's application.

F. The department shall adopt rules to implement this section.

36-2858. Lawful operation of marijuana establishments and marijuana testing facilities

A. Except as specifically and expressly provided in section 36-2857 and notwithstanding any other law, it is lawful and is not an offense under the laws of this state or any locality, may not constitute the basis for detention, search or arrest, and may not constitute the sole basis for seizure or forfeiture of assets or the basis for imposing penalties under the laws of this state or any locality for:

1. A marijuana establishment, or an agent acting on behalf of a marijuana establishment, to:

(a) Possess marijuana or marijuana products.

(b) Purchase, sell or transport marijuana and marijuana products to or from a marijuana establishment.

(c) Sell marijuana and marijuana products to consumers, except that a marijuana establishment may not sell more than one ounce of marijuana to a consumer in a single transaction, not more than five grams of which may be in the form of marijuana concentrate.

(d) Cultivate, produce, test or process marijuana or manufacture marijuana or marijuana products by any means including chemical extraction or chemical synthesis.

2. An agent acting on behalf of a marijuana establishment to sell or otherwise transfer marijuana to an individual under twenty-one years of age, if the agent reasonably verified that the individual appeared to be twenty-one years of age or older by means of a government-issued photographic identification in compliance with rules adopted pursuant to section 36-2854, subsection A, paragraph 6.

3. A marijuana testing facility, or an agent acting on behalf of a marijuana testing facility, to obtain, possess, process, repackage, transfer, transport or test marijuana and marijuana products.

4. A nonprofit medical marijuana dispensary or a marijuana establishment, or an agent acting on behalf of a nonprofit medical marijuana dispensary or a marijuana establishment, to sell or otherwise transfer marijuana or marijuana products to a nonprofit medical marijuana dispensary, a marijuana establishment or an agent acting on behalf of a nonprofit medical marijuana dispensary or a marijuana establishment.

5. Any individual, corporation or other entity to sell, lease or otherwise allow property or goods that are owned, managed or controlled by the individual, corporation or other entity to be used for any activity authorized by this chapter, or to provide services to a marijuana establishment, or marijuana testing facility or agent acting on behalf of a marijuana establishment or marijuana testing facility in connection with any activity authorized by this chapter.

B. This section does not preclude the department from imposing penalties against a marijuana establishment or marijuana testing facility for failing to comply with this chapter or rules adopted pursuant to this chapter.

C. A marijuana establishment may be owned or operated by a publicly traded company.

D. Notwithstanding any other law, a dual licensee:

1. May hold a marijuana establishment license and operate a marijuana establishment pursuant to this chapter.

2. May operate on a for-profit basis if the dual licensee promptly notifies the department and department of revenue and takes any actions necessary to enable its for-profit operation, including converting its corporate form and amending its organizational and operating documents.

3. Must continue to hold both its marijuana establishment license and nonprofit medical marijuana dispensary registration, regardless of any change in ownership of the dual licensee, unless it terminates its status as a dual licensee and forfeits either its marijuana establishment license or nonprofit medical marijuana dispensary registration by notifying the department of such a termination and forfeiture.

4. May not be required to:

(a) Employ or contract with a medical director.

(b) Obtain nonprofit medical marijuana dispensary agent or marijuana facility agent registrations for outside vendors that do not have regular, unsupervised access to the interior of the dual licensee.

(c) Have a single secure entrance as required by section 36-2806, subsection C, but may be required to implement appropriate security measures to deter and prevent the theft of marijuana and to reasonably regulate customer access to the premises.

(d) Comply with any other provision of chapter 28.1 of this title or any rule adopted pursuant to chapter 28.1 of this title that makes its operation as a dual licensee unduly burdensome.

E. Notwithstanding any other law, a dual licensee that elects to operate on a for-profit basis pursuant to subsection D, paragraph 2 of this section:

1. Is subject to the taxes imposed pursuant to title 43.

2. Is not required to submit its annual financial statements or an audit report to the department for purposes of renewing its nonprofit medical marijuana dispensary registration.

F. Notwithstanding any other law, a dual licensee must conduct both of the following operations at a shared location:

1. Sell marijuana and marijuana products to consumers pursuant to this chapter.

2. Dispense marijuana to registered qualifying patients and registered designated caregivers pursuant to chapter 28.1 of this title.

G. Notwithstanding chapter 28.1 of this title or any rule adopted pursuant to chapter 28.1 of this title, a dual licensee may engage in any act, practice, conduct or transaction allowed for a marijuana establishment by this chapter.

H. Notwithstanding any other law:

1. An individual may be an applicant, principal officer or board member of more than one marijuana establishment or more than one dual licensee regardless of the establishment's location.

2. Two or more marijuana establishments or dual licensees may designate a single off-site location as prescribed in section 36-2850, paragraph 18, subdivision (c) to be jointly used by those dual licensees or marijuana establishments.

I. Marijuana establishments, marijuana testing facilities and dual licensees that are subject to applicable federal or state antidiscrimination laws may not pay their employees differently based solely on a protected class status such as sex, race, color, religion, national origin, age or disability. This subsection does not expand or modify the jurisdictional reach, provisions or requirements of any applicable anti-discrimination law.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Title 9, Chapter 22, Article 20, Breast and Cervical Cancer Treatment Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 10, 2021

SUBJECT: Arizona Health Care Cost Containment (AHCCCS)
Title 9, Chapter 20, Article 20

This 5YRR from AHCCCS relates to rules in Title 9, Chapter 20, Article 20, regarding the Breast and Cervical Cancer Treatment Program.

In the last 5YRR of these rules AHCCCS indicated it would amend its rules to improve overall clarity, conciseness, and understandability, but did not complete the changes. AHCCCS indicates the changes are still necessary, and is addressing the changes again in this report.

Proposed Action

The Department plans to complete the changes addressed in the report by submitting a rulemaking to the Council by the end of July 2021.

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 Administration has reviewed the rules and provides recommended changes that are anticipated to provide clarity and not a change in practice. They believe the recommendations will not incur any additional costs to the implementing agency or any other agency but represent current practice. They believe the promulgated rules represent the most cost-effective method of fulfilling AHCCCS responsibilities while complying with all applicable state and federal laws and regulations.

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 Administration believes that the recommended changes are mostly for clarity and conciseness, as well as compliance with changes in federal regulation. They state that the changes impose the least burden and cost because they either update to reflect current practice, or mirror updated federal and state regulations.

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 with the exception of the following:

R9-22-2002 - General Requirement

R9-22-2003 - Eligibility Criteria

R9-22-2004 - Treatment

R9-22-2005 - Application Process

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

Yes, the Department indicates 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 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 the corresponding federal laws; 42 CFR 435 Subpart E.

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 plans to complete a rulemaking by the end of July 2021, that would address the issues identified in the report. The rulemaking will result in the rules being more clear, concise, understandable, and effective.

Council staff recommends approval of this report.

May 25, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 20, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of AHCCCS for Title 9, Chapter 22, Article 20 which is due on May 31, 2021.

AHCCCS reviewed the following rules on this date because the Council rescheduled the initial review of an article under A.R.S. 41-1056(H).

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Matthew Devlin
Assistant Director

Attachments

	person no longer meets the eligibility requirements; under subsection (C), the reference to the Chief Medical Officer should be stricken and replaced with a reference to the Administration since the Administration staff conduct the continuation of eligibility; and finally, subsection (D) should be reworded to clarify the reoccurrence of cancer and eligibility. Section A(6) should be removed since the rule that it references have been repealed.
R9-22-2004	The Administration believes the reference to the Chief Medical Officer in subsections (A)(4), (B)(4) and (C)(4) should be stricken, because the determination of whether a treatment is considered the standard of care may be made by the Administration, not necessarily by the Chief Medical Officer.
R9-22-2005	Reference to R9-22-1406 should be removed because the referenced rule has been repealed.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

The Administration does not anticipate an economic impact due to this change since the change provides clarity and not a change in practice. The recommendations will not incur any additional costs to the implementing agency or any other agency but represent current practice. The promulgated rule represents the most cost-effective method of fulfilling AHCCCS' responsibilities while complying with all applicable state and federal laws and regulations. The promulgated rule represents the most cost-effective method of fulfilling AHCCCS' responsibilities while complying with all applicable state and federal laws and regulations.

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?**

The changes made in the last 5YRR were not made but are still recommended and therefore incorporated in this report.

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 recommended changes are mostly for clarity and conciseness, as well as compliance with changes in federal regulation. The changes impose the least burden and cost because they either update to reflect current practice or mirror updated federal and state regulations.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Chapter 22, Article 20 rules are consistent with statutes and federal regulations 42 CFR 435 Subpart E.

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:**

Not applicable.

14. **Proposed course of action**

Since the rules are not currently aligned with state statute, the change to make these changes to the rule is a priority for AHCCCS and will be submitted to the Governor's office as a rulemaking request by the end of July.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1918. Additional Eligibility Criteria for the Basic Coverage Group

An applicant or member shall meet the following eligibility criteria:

1. Disabled. As a condition of eligibility, an applicant or member shall be disabled. Disabled means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E), except employment activity, earnings, and substantial gainful activity shall not be considered in determining whether the individual meets the definition of disability.
2. Employed. As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant or member's work.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1919. Additional Eligibility Criteria for the Medically Improved Group

As a condition of eligibility for the Medically Improved Group, a member shall:

1. Be employed. Under this Section, employed means an individual who:
 - a. Earns at least the minimum wage and works at least 40 hours per month, or
 - b. Has gross monthly earnings at least equal to those earned by an individual who is earning the minimum wage working 40 hours per month.
2. Cease to be eligible for medical coverage under R9-22-1918 or a similar Basic Coverage Group program administered by another state because the member, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be disabled; and
3. Continues to have a severe medically determinable impairment, as determined under Social Security Act section 1902(a)(10)(A)(ii)(XVI).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1920. Repealed

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1921. Enrollment

The Administration shall enroll members under Article 17 of this Chapter. If a member has not paid a required premium, the Administration shall not grant a guaranteed enrollment period.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1922. Redetermination of Eligibility

- A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
- B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
- C. Medical Improvement. If a member is no longer disabled under R9-22-1918, the Administration shall determine if the member is eligible under other coverage groups including the medically improved group.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

R9-22-2001. Breast and Cervical Cancer Treatment Program Related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meaning unless the context explicitly requires another meaning:

"AZ-NBCCEDP" means the Arizona programs of the National Breast and Cervical Cancer Early Detection Program. AZ-NBCCEDP provides breast and cervical cancer screening and diagnosis in Arizona.

"Cryotherapy" means the destruction of abnormal tissue using an extremely cold temperature.

"LEEP" means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

"Peer-reviewed study" means that, prior to publication, a medical study has been subjected to the review of medical experts who:

- Have expertise in the subject matter of the study,
- Evaluate the science and methodology of the study,
- Are selected by the editorial staff of the publication, and
- Review the study without knowledge of the identity or qualifications of the author.

"WWHP" means the Well Women Healthcheck Program administered by the Arizona Department of Health Services. The WWHP is one of the programs within AZ-NBCCEDP that provides breast and cervical cancer screening and diagnosis.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2002. General Requirements

- A. Confidentiality. The Administration shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.
- B. Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12 of this Chapter.
- C. Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17 of this Chapter.
- D. A Native American woman who receives services through Indian Health Service (IHS) or through a tribal health program qualifies for services provided under this Article if all eligibility requirements are met.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- E. A woman qualified under this Article shall pay co-pays as described in R9-22-711.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2003. Eligibility Criteria

- A. General. To be eligible under this Article, a woman shall meet the requirements of this Article and:

1. Be screened for breast and cervical cancer through AZ-NBCCEDP;
2. Be less than 65 years of age;
3. Be ineligible for Title XIX under Articles 14 and 15 in this Chapter;
4. Receive a positive screen under subsection (A)(1), a confirmed diagnosis through AZ-NBCCEDP, and need treatment for breast cancer or cervical cancer, including a pre-cancerous cervical lesion, as specified in R9-22-2004;
5. Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act, 42 U.S.C. 300gg(c). For purposes of this Article, IHS or Tribal health coverage is not considered creditable coverage as specified in 42 U.S.C. 1396a(a)(10)(A)(ii), as amended by the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2002; and
6. Meet the requirements under R9-22-1417 and R9-22-1418.

- B. Ineligible woman. A woman is ineligible under this Article if the woman:

1. Is an inmate of a public institution and federal financial participation (FFP) is not available,
2. Is at least age 21 but less than age 65 and resides in an Institution for Mental Disease (IMD) as defined in R9-22-112, except if allowed under the Administration's Section 1115 waiver, or
3. No longer meets an eligibility requirement under this Article.

- C. Metastasized cancer. The AHCCCS Chief Medical Officer may continue a woman's eligibility under this Article if a metastasized cancer is found in another part of the woman's body and that metastasized cancer is a known or a presumed complication of the breast or cervical cancer as determined by the treating physician.

- D. Reoccurrence of cancer. A woman shall have eligibility reestablished after eligibility under this Article ends if the woman is screened under the AZ-NBCCEDP program and additional breast cancer or cervical cancer, including a pre-cancerous cervical lesion, is found.

- E. Ineligible male. A male is precluded from receiving screening and diagnostic services under the AZ-NBCCEDP program and is ineligible under this Article.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2004. Treatment

- A. Breast cancer. Coverage for treatment for breast cancer under this Article shall conclude on the last provider visit for the specific treatment of the cancer or at the end of hormonal therapy for the cancer, whichever is later. For purposes of this subsection treatment means:

1. Lumpectomy or surgical removal of breast cancer;
2. Chemotherapy;
3. Radiation therapy; and
4. A treatment for breast cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

- B. Pre-cancerous cervical lesion. Coverage for treatment for a pre-cancerous cervical lesion under this Article, including moderate or severe cervical dysplasia or carcinoma in situ, shall conclude on the last provider visit for specific treatment for the pre-cancerous lesion. For purposes of this subsection treatment means:

1. Conization;
2. LEEP;
3. Cryotherapy; and
4. A treatment for pre-cancerous cervical lesion that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

- C. Cervical cancer. Coverage for treatment for cervical cancer under this Article shall conclude on the last provider visit for the specific treatment for the cancer. For purposes of this subsection treatment means:

1. Surgery;
2. Radiation therapy;
3. Chemotherapy; and
4. A treatment for cervical cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2005. Application Process

- A. Application. A woman may apply for eligibility under this Article by submitting a complete application as specified in R9-22-1406.

- B. Submitting the application. The woman may complete and submit an application at the time of the AZ-NBCCEDP screening. The AZ-NBCCEDP staff may mail or fax the application directly to the Administration.

- C. Date of application. The date of the application is the date of the diagnostic procedure that results in a positive diagnosis for breast cancer or cervical cancer, including a pre-cancerous cervical lesion.

- D. Responsibility of a woman who is applying or who is a member. A woman who is applying or who is a member shall:

1. Provide medical insurance information, including any changes in medical insurance; and
2. Inform the Administration about a change in address, residence, and alienage status.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2006. Approval, Denial, or Discontinuance of Eligibility

- A. Eligibility determination. The Administration shall determine eligibility under this Article and send the notice under subsection

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

tion (B) or (C) within seven days of receiving a complete application.

- B.** Approval. If a woman meets all the eligibility requirements in this Article, the Administration shall provide the woman with an approval notice. The approval notice shall contain:
1. The name of the eligible woman, and
 2. The effective date of eligibility.
- C.** Denial. If the Administration denies eligibility, the Administration shall provide the woman with a denial notice. The denial notice shall contain:
1. The name of the ineligible woman,
 2. The specific reason why the woman is ineligible,
 3. The legal citations supporting the reason for the denial,
 4. The location where the woman can review the legal citations, and
 5. Information regarding the woman's appeal and request for hearing rights.
- D.** Discontinuance.
1. Except as specified in subsection (D)(2), if a woman no longer meets an eligibility requirement under this Article, the Administration shall provide the woman a Notice of Action no later than 10 days before the effective date of the discontinuance.
 2. The Administration may mail the Notice of Action no later than the effective date of the discontinuance if the Administration:
 - a. Receives a written statement from the woman voluntarily withdrawing from AHCCCS,
 - b. Receives information confirming the death of the woman,
 - c. Receives returned mail with no forwarding address from the post office and the woman's whereabouts are unknown, or
 - d. Receives information confirming that the woman has been approved for Title XIX services outside the state of Arizona.
 3. The Notice of Action shall contain the:
 - a. Name of the ineligible woman,
 - b. Effective date of the discontinuance,
 - c. Specific reason why the woman is discontinued,
 - d. Legal citations supporting the reason for the discontinuance,
 - e. Location where the woman can review the legal citations, and
 - f. Information regarding the woman's appeal and request for hearing rights.
- E.** Request for hearing. A woman who is denied, or discontinued for the Breast and Cervical Cancer Treatment Program may request a hearing under Chapter 34.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

R9-22-2007. Effective and End Date of Eligibility

- A.** Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
- B.** The end date of eligibility:
1. For breast cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer or at the end of hormonal therapy for the cancer, whichever is later.

2. For pre-cancerous cervical lesion, is four months after the last provider visit for a treatment specified in R9-22-2004 for the pre-cancerous lesion.
3. For cervical cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4). Section amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-2008. Redetermination of Eligibility

- A.** Redetermination. Except as provided in subsection (B), the Administration shall redetermine eligibility at least once a year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program under this Article, the Administration shall notify the woman of continued eligibility. A woman is not required to be screened for breast and cervical cancer through AZ-NBC-CEDP at redetermination.
- B.** Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances that may affect eligibility, including a change in treatment.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND

Article 21, consisting of Sections R9-22-2101 through R9-22-2103, made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

R9-22-2101. General Provisions

- A.** A.R.S. § 36-2903.07 establishes the Administration as the authority to administer the Trauma and Emergency Services Fund.
- B.** The Administration shall distribute 90% of monies from the trauma and emergency services fund to a level I trauma center, as defined in subsection (F) of this Section, for unrecovered trauma center readiness costs as defined in subsection (F) of this Section. Reimbursement is limited to no more than the amount of unrecovered trauma center readiness costs as determined in subsections (D) and (E) of this Section. Unexpended funds may be used to reimburse unrecovered emergency room costs under subsection (C) of this Section.
- C.** The Administration shall distribute 10% of monies from the trauma and emergency services fund, for unrecovered emergency services costs, to a hospital having an emergency department, using criteria under R9-22-2103. Reimbursement is limited to no more than the amount of unrecovered emergency services costs as determined in R9-22-2103. The Administration may distribute more than 10% of the monies for unrecovered emergency room costs when there are unexpended monies under subsection (B) of this Section.
- D.** The Administration shall distribute a reporting tool and guidelines to level I trauma centers to determine, on an annual basis, the unrecovered trauma center readiness costs for level I trauma centers as defined in subsection (F) of this Section. The reporting time-frame is July 1 of the prior year through June 30 of the reporting year. A level I trauma center shall submit the requested data and a copy of the most recently completed

36-2901.05. Breast and cervical cancer treatment; additional definition of eligibility

A. For the purposes of this article, beginning January 1, 2002, "eligible person" includes a person who meets all of the following requirements:

1. Has been screened for breast and cervical cancer by a provider or entity that is recognized by the well woman healthcheck program administered by the department of health services as part of its program under title XV of the public health service act and that operates consistently with well woman healthcheck program guidelines.
2. Needs treatment for breast or cervical cancer.
3. Has an income level that is at or below two hundred fifty per cent of the federal poverty guidelines.
4. Is under sixty-five years of age.
5. Is not otherwise covered under creditable coverage as defined in section 2701(c) of the public health services act (42 United States Code section 300gg(c)).

B. The administration shall limit the assistance it provides pursuant to this section to medically necessary services provided during the period that the person requires treatment for breast or cervical cancer as determined by the administration.

C. The administration shall use a simplified eligibility form that the applicant may mail to the administration. Once the administration receives a completed application, the administration shall expedite the eligibility determination and enrollment on a prospective basis.

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

- (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

- (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

- (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 16, Article 1, Licensing of Midwifery



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 9, 2021

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 1, Licensing of Midwifery

Summary:

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 16, Article 1, regarding Licensing of Midwifery. The rules define "Midwifery services" as "health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care." *See* R9-16-101(30).

In the previous 5YRR for these rules, which the Council approved in April 2017, the Department stated that it would "review midwifery services outcomes information, any reports submitted by a midwifery advisory committee, and any changes to industry standards to determine whether substantive changes were needed to the current rules to protect the health and safety outcomes." The Department indicated that it would begin the rulemaking process by July 2019 and submit a rulemaking to the Council by July 2021. The Department indicates that based on the review, no substantive changes to the rules were needed.

Proposed Action

The Department states that it submitted a request for an exception to Executive Order 2021-01 in order to conduct a Notice of Final Expedited Rulemaking to address the issues identified in this report.

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:**

The Department oversees licensing within healthcare occupations, including licensing of midwives. The Department states that the economic impact of the rules since the previous 2016 5YRR remains minimal. The Department defines impact as minimal for regulatory costs of \$2,000 or less.

The Department and midwives seeking to become licensed primarily incur the regulatory costs of the rules. Prior to 2013, the Department estimated that the cost to become a licensed midwife ranged from \$850 to \$1,050 dollars. However, in a 2013 rulemaking, the Department determined that the cost to become a licensed midwife was higher than its initial estimates. The Department determined that because of additional fees for the application and examination from the North American Midwives Registry, fees to become a licensed midwife were estimated to be \$2,115 to \$2,265. Since these fees were less than a \$2,000 dollar increase from the initial estimates, the Department still considers the rule impact to be minimal for affected individuals.

The Department is responsible for enforcing the rules and investigating any complaints about licensed midwives. In 2019, the Department estimates that the costs to investigate seven complaints cost the Department \$2,520 to \$3,255.

The stakeholders include: the Department, midwives licensed through the Department, pregnant women, their newborns, and the general public.

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

The Department states that the benefits of the rules outweigh the costs. The Department has determined that although rules impose a regulatory burden and cost on midwives, the regulatory burden is outweighed by the increased health and safety of pregnant women, their newborns, and the general public.

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?**

Yes. The Department indicates that none of the rules under review are clear, concise, and understandable, for the reasons indicated in the 5YRR.

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

Yes. The Department states that the rules are consistent with other rules and statutes, but identifies an incorrect reference in R9-16-108 (Responsibilities of a Midwife; Scope of Practice).

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are effective in achieving their objectives, but their effectiveness could be improved if the rules were amended to improve their clarity, conciseness, understandability, and consistency as identified in the report.

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

Yes. The Department 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 Department states that there are no corresponding federal laws to the rules under review.

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 states that it believes midwifery licenses constitute a general permit as defined in A.R.S. § 41-1001(11). The Department complies with A.R.S. § 41-1037.

11. **Conclusion**

Council staff finds that the Department submitted an adequate report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 29, 2021

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. 16, Article 1, 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. 16, Article 1, Licensing of Midwifery, which is due on April 30, 2021.

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,

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

Robert Lane
Director's Designee

RL:rms

Enclosures

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

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Health and Wellness for all Arizonans



Arizona Department of Health Services
Five-Year-Review Report
Title 9. Health Services
Chapter 16. Department of Health Services
Occupational Licensing
Article 1. Licensing of Midwifery
April 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-752, 36-753, 36-754, and 36-755

For R9-16-107: A.R.S. §§ 41-1073 through 41-1076

2. The objective of each rule:

Rule	Objective
R9-16-101	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-16-102	To establish application requirements for obtaining an initial midwifery license.
R9-16-103	To establish the application requirements for renewing a midwifery license.
R9-16-104	To establish administrative requirements pertaining to licensed midwives, including the process for requesting being listed or not being listed on the Department's public list of licensed midwives, reporting requirements for the death of a client or the client's newborn, and documentation maintenance requirements.
R9-16-105	To specify requirements for continuing education for licensed midwives to ensure that a licensed midwife's ability to provide midwifery services is continually improved.
R9-16-106	To specify the process for changing a midwife's name on a midwifery license or to request a duplicate midwifery license.
R9-16-107	To establish licensing time frames for midwifery licenses required in A.R.S. Title 41, Chapter 6, Article 7.1.
R9-16-108	To establish standards for the provision of midwifery services that ensure the health and safety of a client and the client's newborn.
R9-16-109	To establish requirements for a licensed midwife to obtain and document informed consent from a woman before the woman becomes the licensed midwife's client and begins receiving midwifery services from the licensed midwife to ensure that the woman has information including the licensed midwife's scope of practice and potentials risks, adverse outcomes, complications, and alternatives associated with an at-home delivery specific to the woman's condition, necessary for the woman to make an informed decision.
R9-16-110	To specify the process and requirements for when a client declines a required test to ensure that the client has received information pertaining to the potential risks for declining a test.

R9-16-111	To establish the medical conditions that would require a licensed midwife to not accept for care a pregnant woman or to transfer care of a client or the client's newborn to ensure that the pregnant woman, client, or newborn receives care from a health care professional who has the skills, knowledge, training, and credentials to provide the level of care necessary to ensure the pregnant woman's, client's or newborn's health and safety
R9-16-112	To specify the medical conditions that would require a licensed midwife to consult with a health care professional pertaining to the care of a client or the client's newborn to ensure that the client or the client's newborn receives care based on the consultation with the health care professional who has the appropriate skills, knowledge, training, and credentials to recommend the care necessary to ensure the client or the client's newborn's health and safety.
R9-16-113	To require a licensed midwife to notify an emergency medical services provider when the licensed midwife determines that the health or safety of a client or the client's newborn is at risk and to establish the specific emergency measures that a licensed midwife is authorized and allowed to provide.
R9-16-114	To specify the specific information pertaining to a client or a client's newborn that a licensed midwife is requirement to submit to the Department that will assist with monitoring whether the licensed midwife is complying with applicable health and safety standards in rules and statutes when providing midwifery services to the client and the client's newborn.
R9-16-115	To establish recordkeeping requirements for the midwifery services provided to a client or the client's newborn.
R9-16-116	To specify the conditions or circumstances under which the Department may deny, suspend, or revoke a midwife's license to practice midwifery or assess a midwife a civil penalty.

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
Multiple	While the rules are effective, their effectiveness would be improved if the issues identified in paragraphs 4 and 6 were addressed.

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
R9-16-108	In subsection (K)(2)(b) the correct reference is to A.A.C. R9-6-338.

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 ___ No X

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
R9-16-101	The rules would be clearer if the terms “client” and “delivery” were defined. The rule would be more concise if the definition of “addiction” were repealed because it is not used in the Article, and if the definitions of “abnormal presentation,” “aseptic,” “current photograph,” “gravida,” “infant,” “intrapartum,” “local registrar,” “para,” “parity,” “prenatal care,” “primigravida,” “primipara,” “serious mental illness,” “substance abuse,” and “shoulder dystocia” were removed and described in the one location the term is used. The rule would be more understandable if multiple grammatical errors were corrected, the list of definitions were corrected to put the definitions of “certified nurse midwife” and “complete breech” in alphabetical order, and the term “child” were replaced with the defined terms “fetus” and “newborn” in the definition of “consultation.”
R9-16-102	The rule would be more concise and understandable if the content of subsection (A)(2) were replaced with a requirement for submission of documentation for the applicant that complies with A.R.S. § 41-1080. The rule would be more understandable if the title of the rule were changed to use the term “License” or “Licensing” rather than “Licensure,” the content of the definition of “current photograph” were included in subsection (A)(7), subsection (C)(3) included the time limit of 180 calendar days during which the applicant may take the test as many times as desired, and subsection (D)(2) stated that new documentation is required if the documentation required in subsection (A)(4) or (6) is not current.
R9-16-103	The rule would be clearer if the title were changed to “License Renewal.”
R9-16-104	The rule would be clearer if the numerals in subsections (B)(1)(c) and (C)(2) were spelled out and if the term “client” were defined in R9-16-101.
R9-16-105	The rule would be more understandable if the term “continuing educational units” in the lead-in were defined or described and if the term “client” were defined in R9-16-101.
R9-16-107	The rule would be clearer if the phrase in subsection (B)(1)(a) were changed from “for initial licensure” to “for an initial license.” Subsection (B)(2) would also be more understandable if it did not contain requirements for both the Department and for an applicant or midwife. Subsections (B)(3), (4), (5), and (6) would be improved if they were reworded to avoid duplication and made clearer, more understandable, and more concise.
R9-16-108	The rule would be clearer if the terms “client” and “delivery” were defined in R9-16-101. The rule would be more understandable if the phrases “only to a healthy woman,” “review of the woman’s obstetrical history,” and “delivery of a healthy newborn” were clarified. The rules would be more concise and understandable if the content of the definition of “aseptic” were included in subsection (G), the content of the definition of “intrapartum” were included in subsection (J), the content of the definition of “primipara” were included in subsection (J)(4)(a), and a description of the undefined term “multigravidas” were included in subsection (J)(4)(b). The rule would also be clearer if the term “client” were replaced with “pregnant woman” throughout subsection (C) because the pregnant woman would not become a client until after the requirements in subsections (C)(1) and (2) were completed. Subsection (D) would be improved by restructuring subsection (D)(2) fit with the lead-in. The rule would be more understandable if the term “child” in subsection (F) were replaced with the defined terms “fetus” and “newborn” and if the terms

	<p>“healthy,” “credentials,” “adequate,” “emergency management” and “appropriate baby care” were better described. In Subsection (I), subsections (I)(1) and (2) are obsolete and should be reworded to incorporate requirements in subsections (I)(3) and (4), which should then be removed. In subsections (I)(5), (J)(4)(b), and (J)(5)(a), the numerals should be spelled out; subsection (I)(5)(d) should use the word “documentation” rather than “document”; subsection (I)(5)(f) should be split to separate recommendation of RhoGam administration from midwife administration; and subsection (I)(6) split to separate monitoring fetal heart tones from documenting first quickening. In subsection (J), the term “interpartum period” should be described, rather than defined in R9-16-101; subsections (J)(1)(b), (c), and (d) should be clarified; and subsection (J)(3) should be restructured to improve clarity. The terms “primiparas” and “multigravitas” should be described in subsection (J)(4), and subsection (J)(5)(d) reworded and clarified. In subsections (K)(1)(g) and (h) and (2)(c), the wording could be revised to improve clarity and format. Subsection (K)(2)(d) should be revised to clarify that documentation of the physical assessment of the newborn should also be documented. Subsection (L) should be reworded to refer to the requirements in A.A.C. R9-19-203. Subsection (M) should be removed as obsolete.</p>
R9-16-109	Subsection (D) should be removed as obsolete.
R9-16-110	Subsection (D) should be removed as obsolete.
R9-16-111	Subsection (A) would be clearer if the term “child” were replaced with the defined terms “fetus” and “newborn.” Subsection (B) contains conditions that can occur or be diagnosed after midwifery services begin or can be corrected, as well as those that cannot be “corrected” – such as a history of a condition. The rule would be more understandable if those conditions that should prevent midwifery services from beginning were listed in one subsection, while those that should result in a transfer of care were listed in a different subsection. The rule would also be more understandable if the undefined terms “baby” in subsection (B)(14), “evidence” in subsection (B)(16), and “excessive” in subsection (I)(1)(c) were clarified.
R9-16-112	The rule would be clearer if the terms “parity” in subsection (A)(3), “primigravida” in subsection (A)(5), and “abnormal” in subsection (A)(16) were described. The numerals in subsections (A)(7), (A)(17), (B)(1), and (B)(3) (“5 minutes”) should also be spelled out.
R9-16-113	The rule would be clearer if the term “shoulder dystocia” in subsection (A)(2)(e) were described rather than defined in R9-16-101. The numerals in subsection (A)(2)(b) should also be spelled out.
R9-16-114	The rule would be clearer if the terms “gravida” in subsection (A)(2)(e) and “para” in subsection (A)(2)(f) were described rather than defined in R9-16-101 and if subsections (A)(3) and (5)(j) specified information about any consultations obtained by the midwife according to R9-16-112. The numerals in subsections (A)(5)(g) and (h) should also be spelled out.
R9-16-115	The rule would be clearer if subsection (B)(4) referred to all of R9-16-110(A), rather than only to R9-16-110(A)(3), and if subsection (B)(5) referred to R9-16-108(D), rather than to R9-16-108(E) – the client’s copy. Subsections (B)(12) and (C)(5) would be clearer if the cross-references included the applicable subsections in R9-16-108(I). The rule would also be improved if subsections (B)(14) and (C)(7) were reworded to clarify that “written reports” are required in a client or newborn record only if they were provided by the individual providing the consultation.
R9-16-116	The rule would be more understandable if the order of the statutes in the Section lead-in were reversed.

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:

There are currently four types of midwives who provide midwifery services: certified nurse-midwives, certified midwives, certified professional midwives, and direct-entry midwives. Certified nurse-midwives and certified midwives are licensed nurses, usually regulated under a state's Board of Nursing, and are allowed to provide midwifery services in all 50 states. A.R.S. Title 36, Chapter 6, Article 7, contains the statutes for the licensing in Arizona of certified professional midwives (CMPs) and direct-entry midwives (DMs), who are not required to be nurses. These statutes provide the authority for the Department's rules in 9 A.A.C. 16, Article 1, which specify the minimum standards for an individual to be licensed in midwifery in Arizona as a CMP or DM. The CPM is the newest midwife credential, first issued in 1994 by the North American Registry of Midwives (NARM) to individuals who provide verification of the required experience and skills and pass the NARM Skills Assessment. DMs include those individuals who obtained, through demonstrated experience, skills, and knowledge, and have continuously held, a midwifery license in this state since 1999. There are currently 85 licensed midwives, with licenses issued by the Department under these rules, of which 71 are CPMs and 14 are DMs.

To avoid anomalies that may have been caused by COVID-19, data is provided for 2019. In 2019, the Department investigated seven complaints that the Department estimates it cost the Department between \$2,520 to \$3,255 to investigate. The Department received 76 midwifery services reports after the required submission date. The Department estimates this cost the Department \$1,824 based on an average of one hour of review and document-drafting time X \$24/hour salary. Enforcement actions requiring the preparation of a hearing notice average 15 hours program staff time with salaries ranging from \$24 to \$40/hour with an estimated cost of \$480 per enforcement action. The Department estimates a total cost of approximately \$2,000 for preparing hearing notices for enforcement actions. The Department assessed 20 civil penalties with the amount assessed ranging from \$50 to \$600 and with an average amount of \$178 assessed against an individual licensed midwife.

All of the rules in 9 A.A.C. 16, Article 1, were last revised in an exempt rulemaking, effective July 1, 2013, pursuant to Laws 2012, Ch. 93. Thus, there is no economic, small business, and consumer impact statement available for a comparison. For the purpose of this economic impact comparison, annual costs/revenues are designated as minimal when \$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.

The revisions made as part of the rulemaking included changes to clarify definitions, as well as to streamline and update applicant qualifications, application requirements, prohibited practice and transfer of care, required consultation, emergency measures, and administration of client and newborn records. Notable changes to the rules include:

- The elimination of Department-administered examination requirements and the addition of conditions for an applicant to provide documentation of certification by NARM as a CPM;

- The elimination of the exhibits pertaining to initial and renewal application forms, the preceptor rating guide, the affidavit of continuing education, and the midwives quarterly report.
- The expansion of a midwife's scope of practice where a client may be accepted for a vaginal delivery after Caesarean section or for the delivery a fetus in a complete or frank breech presentation;
- The requirement that a midwife must establish an emergency care plan for all clients;
- A new rule regarding informed consent for midwifery services;
- A new rule permitting a client to decline testing; and
- The establishment of a midwifery advisory committee to assist the director of the Department in analysis and research and the formulation of an annual report with recommendations to the Department.

Before the rule change, an applicant for an initial license applied to the Department, took a written examination from NARM, and, if passed, took the Department's practical examination and jurisprudence examination. An applicant submitted a filing fee of \$25 with the initial application, which included documentation showing that the applicant completed a midwifery apprenticeship with an assessment of above average or excellent and documentation showing that the applicant obtained knowledge specific to the provision of midwifery services with an assessment of above average or excellent. If the applicant was approved to take the written examination from NARM, the applicant submitted the notice of the Department's approval and a written examination fee (\$700-\$900), the cost of the written examination increased during the time the rules were in effect) to NARM to qualify to take the written examination. After the applicant passed the NARM written examination, the Department informed the applicant that a \$100 testing fee was required before the applicant could take the Department's practical examination and jurisprudence examination. If the applicant passed the practical and jurisprudence examinations, the applicant was required to submit a \$25 licensing fee before the Department issued an initial midwifery license to the applicant. The total cost for licensing fees and examination fees to an applicant when obtaining an initial midwifery license under the rules that were in effect before July 1, 2013, was \$850 - \$1,050 depending on the cost of the NARM written examination. The Department was also estimated to incur minimal costs to process an initial license application under this scenario.

Under the midwifery licensing rules that became effective July 1, 2013, the established fees of \$25 for filing an initial midwifery application, \$100 for testing, and an additional \$25 for licensing were maintained. However, an applicant submitting an initial application was also required to submit documentation of NARM certification. According to the NARM Candidate Information Book, an individual applying for certification as a professional midwife was required to submit to NARM an application fee of \$950 to \$1,100 and an examination fee of up to \$900. A fee of \$115, paid directly to the testing company, is in addition to the NARM fees. Thus, licensing fees and examination fees for an initial midwifery license under the current rules were estimated to be \$2,115 to \$2,265, which reflects a minimal increase in costs for obtaining an initial midwifery license. The Department is also estimated to incur minimal costs to process an initial license application. In 2019, the Department processed 40 initial licensing applications.

The fee of \$25 for renewing a midwifery license remained the same under both sets of rules. However, under the current rules, a midwife who has not been continuously licensed by the Department since 1999 is required to maintain certification as a professional midwife by NARM. This includes a recertification fee of \$150 every three years, imposing a minimal increase in costs on the 71 licensed midwives/CPMs.

The new rules eliminated the exhibits pertaining to initial and renewal application forms, the preceptor rating guide, the affidavit of continuing education, and the midwives quarterly report. Instead, a licensed midwife is required to submit a report on midwifery services provided to each client no more than 30 days after the termination of midwifery services. The Department has established an on-line report, streamlining the reporting process and providing a significant benefit to licensed midwives and the Department.

At the recommendation of the midwifery advisory committee, the current rules include an expansion of a midwife's scope of practice, where a client may be accepted for a vaginal delivery after Caesarean section or for the delivery a fetus in a complete or frank breech presentation. To protect the health and safety of all clients of a licensed midwife, the midwife is required to establish an emergency care plan for and obtain informed consent for midwifery services from all clients. The addition of these requirements may have caused a midwife to incur a minimal cost, but also provided a significant benefit to the midwives, clients, prospective clients, and the general public. Permitting a client to decline testing may also have provided a significant benefit to a client.

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 2016 five-year-review report stated a plan to review midwifery services outcomes information, any reports submitted by a midwifery advisory committee, and any changes to industry standards to determine whether substantive changes were needed to the current rules to protect the health and safety outcomes, with the rulemaking process to begin by July 2019 and a Notice of Final Rulemaking submitted to GRRC by July 2021. The Department completed the review and determined that no substantive changes are needed to the rules. The Department has submitted a request for an exception to the Governor's rulemaking moratorium established by Executive Order 2021-02 to conduct an expedited rulemaking to make the minor clarifying changes described in this five-year review report, but the exception has not yet been approved.

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 in 9 A.A.C. 16, Article 1, provide the minimum standards for the licensing of individuals to practice midwifery in Arizona. They include clarifying definitions, as well as streamlined and updated applicant

qualifications, application requirements, prohibited practice and transfer of care, required consultation, emergency measures, and administration of client and newborn records. These rules help protect the health and safety of pregnant women and their fetuses and newborns. Many of the changes made to the rules as part of the 2013 rulemaking were made upon the recommendation of the midwifery advisory committee, which included representatives of midwives licensed under the rules, women who had received midwifery services, physicians, and nurse midwives. Laws 2012, Ch. 93, under which the rules were adopted, required the Department to consider adopting rules regarding midwifery that reduce the regulatory burden on licensed midwives, revise the midwifery scope of practice, and if available, adopt national licensure testing standards. As such, the rules were designed to ensure that the benefits of the rules to all stakeholders outweighed the costs. With the exception of the minor issues identified in this five-year-review report, the Department believes that the requirements in the rules impose the least burden on regulated persons necessary to protect the health and safety of pregnant women, their fetuses and newborns, and the general public.

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 currently no requirements for the licensing of midwifery in the federal regulations.

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 Department believes that midwifery licenses constitute the issuance of a general permit.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to conduct an expedited rulemaking to address the issues identified in this five-year-review report, if granted an exception from the rulemaking moratorium. Upon initiating a rulemaking pursuant to an exception from the rulemaking moratorium, the Department would expect to submit a Notice of Final Expedited Rulemaking to the Office of the Governor, in compliance with Executive Order 2021-02, within 180 days after being granted the exception.

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

ARTICLE 1. LICENSING OF MIDWIFERY

Section

- R9-16-101. Definitions
- R9-16-102. Application for Initial Licensure
- R9-16-103. Renewal
- R9-16-104. Administration
- R9-16-105. Continuing Education
- R9-16-106. Name Change; Duplicate License
- R9-16-107. Time-frames
- R9-16-108. Responsibilities of a Midwife; Scope of Practice
- R9-16-109. Informed Consent for Midwifery Services
- R9-16-110. Assertion to Decline Required Tests
- R9-16-111. Prohibited Practice; Transfer of Care
- R9-16-112. Required Consultation
- R9-16-113. Emergency Measures
- R9-16-114. Midwife Report after Termination of Midwifery Services
- R9-16-115. Client and Newborn Records
- R9-16-116. Denial, Suspension, or Revocation of License; Civil Penalties; Procedures

ARTICLE 1. LICENSING OF MIDWIFERY

R9-16-101. Definitions

In addition to the definitions in A.R.S. § 36-751, the following definitions apply in this Article unless otherwise specified:

1. “Abnormal presentation” means the fetus is not in a head-down position with the crown of the head being the leading body part.
2. “Addiction” means a condition that results when a person ingests a substance that becomes compulsive and interferes with ordinary life responsibilities, such as work, relationships, or health.
3. “Amniotic” means the fluid surrounding the fetus while in the mother’s uterus.
4. “Apgar score” means the number indicating a newborn’s physical condition attained by rating selected body functions.
5. “Aseptic” means free of germs.
6. “Breech” means a complete breech, a frank breech, or an incomplete breech.
7. “Certified nurse midwife” means an individual who meets the criteria in 4 A.A.C. 19, Article 5 and is certified by the Arizona State Board of Nursing.
8. “Complete breech” means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded at the knees and the feet near the buttocks.
9. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
10. “Cervix” means the narrow lower end of the uterus which protrudes into the cavity of the vagina.
11. “Consultation” means communication between a midwife and a physician or a midwife and a certified nurse midwife for the purpose of receiving a written or verbal recommendation and implementing prospective advice regarding the care of a pregnant woman or the woman’s child.
12. “Current photograph” means an image of an individual, taken no more than 60 calendar days before the submission of the individual’s application, in a Department-approved electronic format capable of producing an image that:
 - a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;

- b. Is 2 inches by 2 inches in size;
 - c. Is in natural color;
 - d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;
 - e. Has a plain white or off-white background; and
 - f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
13. "Dilation" means opening of the cervix during the mechanism of labor to allow for passage of the fetus.
 14. "Effacement" means the gradual thinning of the cervix during the mechanism of labor and indicates progress in labor.
 15. "Emergency care plan" means the arrangements established by a midwife for a client's transfer of care in a situation in which the health or safety of the client or newborn are determined to be at risk.
 16. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
 17. "Episiotomy" means the cutting of the perineum, center, middle, or midline, in order to enlarge the vaginal opening for delivery.
 18. "Fetus" means a child in utero from conception to birth.
 19. "Frank breech" means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded flat up against the head.
 20. "Gestation" means the length of time from conception to birth, as calculated from the first day of the last normal menstrual period.
 21. "Gravida" means the number of times the mother has been pregnant, including a current pregnancy, regardless of whether these pregnancies were carried to term.
 22. "Incomplete breech" means that at the time of birth the buttocks of a fetus is pointing downward with one leg folded at the knee with the foot near the buttocks.
 23. "Infant" has the same meaning as in A.R.S. § 36-694.
 24. "Informed consent" means a document signed by a client, as provided in R9-16-109, agreeing to the provision of midwifery services.
 25. "Intrapartum" means occurring from the onset of labor until after the delivery of the placenta.
 26. "Jurisprudence test" means an assessment of an individual's knowledge of the:
 - a. Laws of this state concerning the reporting of births, prenatal blood tests, and newborn screening; and

- b. Rules pertaining to the practice of midwifery.
27. “Ketones” means certain harmful chemical elements which are present in the body in excessive amounts when there is a compromised bodily function.
28. “Local registrar” means a person appointed by the state’s registrar of vital statistics for a registration district whose duty includes receipt of birth and death certificates for births and deaths occurring within that district for review, registration, and transmittal to the state office of vital records according to A.R.S. Title 36, Chapter 3.
29. “Meconium” means the first bowel movement of the newborn, which is greenish black in color and tarry in consistency.
30. “Midwifery services” means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care.
31. “Newborn” has the same meaning as in A.R.S. § 36-694.
32. “Para” means the number of births that are greater than 20 weeks of gestation, including viable and non-viable births, where multiples are counted as one birth.
33. “Parity” means the number of newborns a woman has delivered.
34. “Perineum” means the muscular region in the female between the vaginal opening and the anus.
35. “Physician” means an allopathic, an osteopathic, or a naturopathic practitioner licensed according to A.R.S. Title 32, Chapters 13, 14, or 17.
36. “Postpartum” means the six-week period following delivery of a newborn and placenta.
37. “Prenatal” means the period from conception to the onset of labor and birth.
38. “Prenatal care” means the on-going risk assessments, clinical examinations, and prenatal, nutritional, and anticipatory guidance offered to a pregnant woman.
39. “Prenatal visit” means each clinical examination of a pregnant woman for the purpose of monitoring the course of gestation and the overall health of the woman.
40. “Primigravida” means a woman who is pregnant for the first time.
41. “Primipara” means a woman who has given birth to her first newborn.
42. “Quickening” means the first perceptible movement of the fetus in the uterus, occurring usually in the 16th to the 20th week of gestation.
43. “Rh” means a blood antigen.
44. “Serious mental illness” means a condition in an individual who is 18 years of age or older and who exhibits emotional or behavioral functioning, as a result of a mental disorder as defined in A.R.S. § 36-501, that:
- a. Is severe and persistent, resulting in a long-term limitation of their functional

capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation; and

- b. Impairs or substantially interferes with the capacity of the individual to remain in the community without supportive treatment or services of a long-term or indefinite duration.
- 45. “Substance abuse” means the continued use of alcohol or other drugs in spite of negative consequences.
 - 46. “Shoulder dystocia” means the shoulders of the fetus are wedged in the mother’s pelvis in such a way that the fetus is unable to be born without emergency action.
 - 47. “Transfer of care” means that a midwife refers the care of a client or newborn to an emergency medical services provider, a certified nurse midwife, a hospital, or a physician who then assumes responsibility for the direct care of the client or newborn.
 - 48. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

R9-16-102. Application for Initial Licensure

A. An applicant for an initial license to practice midwifery shall submit:

- 1. An application in a format provided by the Department that contains:
 - a. The applicant’s name, address, telephone number, and e-mail address;
 - b. The applicant’s Social Security Number, as required under A.R.S. §§ 25-320 and 25-502;
 - c. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
 - d. If the applicant was convicted of a felony or misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
 - f. An attestation that information required as part of the application has been submitted and is true and accurate; and
 - g. The applicant’s signature and date of signature;
- 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. Documentation that demonstrates the applicant is 21 years of age or older if the documentation submitted in subsection (A)(2) does not demonstrate that the applicant is 21 years of age or older;
 4. Current documentation of completion of training in:
 - a. Adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association, and
 - b. Neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
 5. Documentation of a high school diploma, a high school equivalency diploma, an associate degree, or a higher degree;
 6. Documentation that the applicant is certified by the North American Registry of Midwives as a Certified Professional Midwife;
 7. A current photograph of the applicant;
 8. A non-refundable application fee of \$25; and
 9. A non-refundable testing fee of \$100 for a jurisprudence test administered by the Department.
- B.** The Department shall review an application for an initial license to practice midwifery according to R9-16-107 and Table 1.1.
- C.** If an applicant receives notification of eligibility to take the jurisprudence test, the applicant:
1. Shall take the jurisprudence test administered by the Department,
 2. Shall provide proof of identity by a government-issued photographic identification card upon the request of the individual administering the jurisprudence test,
 3. May take the jurisprudence test as many times as desired without paying an additional testing fee, and
 4. Shall score 80% or higher correct answers on the jurisprudence test to be eligible to receive an initial license to practice midwifery.
- D.** If an applicant scores 80% or higher correct answers on the jurisprudence test, the Department shall provide written notice to the applicant, within five working days after the date of the jurisprudence test, to submit to the Department:
1. A licensing fee of \$25; and

2. The documentation required in subsection (A)(4) or (6), if the training required in subsection(A)(4) or certification required in subsection (A)(6) is not current.
- E.** The Department shall issue an initial license to practice midwifery within five working days after receiving the applicable documentation and licensing fee required in subsection (D).
- F.** The Department shall provide to an applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A) and inform the applicant that the applicant may reapply under subsection (A) if the applicant does not:
1. Score 80% or higher correct answers on the jurisprudence test within 180 calendar days after the date of the notification of eligibility to take the jurisprudence test, or
 2. Submit to the Department the applicable documentation and licensing fee required in subsection (D) within 120 calendar days after the date of the notification in subsection (D).

R9-16-103. Renewal

- A.** At least 30 calendar days and no more than 60 calendar days before the expiration date of a midwifery license, a midwife shall submit to the Department:
1. An application for renewal of a midwifery license in a format provided by the Department, that contains:
 - a. The midwife’s name, address, telephone number, and e-mail address;
 - b. The midwife’s license number;
 - c. Whether the midwife has been convicted of a felony or a misdemeanor in this or another state or jurisdiction in the previous two years;
 - d. If the midwife was convicted of a felony or misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the midwife was convicted, and
 - iv. The disposition of the case;
 - e. Whether the midwife agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
 - f. An attestation that the midwife has completed the continuing education requirement in R9-16-105;
 - g. An attestation that the midwife is complying with the requirements in A.R.S. § 32-3211;
 - h. An attestation that information required as part of the application has been

submitted and is true and accurate; and

- i. The midwife's signature and date of signature;
2. Either:
- a. Documentation that the midwife is currently certified by the North American Registry of Midwives as a Certified Professional Midwife; or
 - b. For a midwife who has been continuously licensed as a midwife by the Department since 1999, a copy of both sides of documentation showing the completion of current training in:
 - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
 - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b); and
3. A non-refundable renewal fee of \$25.
- B.** The Department shall review an application for renewal of a license to practice midwifery according to R9-16-107 and Table 1.

R9-16-104. Administration

- A.** A midwife may submit a written request for the Department to:
1. Add the midwife's name, address, and telephone number to a list of licensed midwives on the Department's website; or
 2. Remove the midwife's name, address, and telephone number from a list of licensed midwives on the Department's website.
- B.** A midwife shall:
1. Notify the Department in a format provided by the Department within five working days after:
 - a. A client has died while under the midwife's care,
 - b. A stillborn child has been delivered by the midwife, or
 - c. A newborn delivered by the midwife has died within the first 6 weeks after birth;and
 2. Provide a summary of the:
 - a. Circumstances leading up to the event, and
 - b. Actions taken by the midwife in response to the event.
- C.** A midwife shall:
1. Maintain documentation of:

- a. Completion of current training in:
 - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
 - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b);
 - b. Except as provided in R9-16-103(A)(2)(b), current certification as a Certified Professional Midwife by the North American Registry of Midwives; and
 - c. The continuing education required in subsection R9-16-105 for at least the previous three years; and
2. Provide a copy of documentation required in subsection (C)(1) to the Department within 2 working days after the Department's request.

R9-16-105. Continuing Education

During the term of a midwifery license, the midwife shall obtain at least 20 continuing education units that:

- 1. Improve the midwife's ability to:
 - a. Provide services within the midwife's scope of practice,
 - b. Recognize and respond to situations outside the midwife's scope of practice, or
 - c. Provide guidance to other services a client may need; and
- 2. Have been approved as applicable to the practice of midwifery by the:
 - a. American Nurses Association,
 - b. American Congress of Obstetrics and Gynecologists,
 - c. Midwives Alliance of North America,
 - d. Arizona Medical Association,
 - e. American College of Nurse Midwives,
 - f. Midwifery Education Accreditation Council, or
 - g. Another health professional organization.

R9-16-106. Name Change; Duplicate License

A. To request a name change on a midwifery license or a duplicate midwifery license, a midwife shall submit in writing to the Department:

- 1. The midwife's name on the current midwifery license;
- 2. If applicable, the midwife's new name;
- 3. The midwife's address, license number, and e-mail address;

4. As applicable:
 - a. Documentation supporting the midwife's name change, or
 - b. A statement that the midwife is requesting a duplicate midwifery license; and
 5. A non-refundable fee of \$10.00.
- B.** Upon receipt of the written request required in subsection (A), the Department shall issue, as applicable:
1. An amended midwifery license that incorporates the name change but retains the expiration date of the midwifery license, or
 2. A duplicate midwifery license.

R9-16-107. Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of license granted by the Department is specified in Table 1.1. The applicant or midwife and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license granted by the Department is specified in Table 1.1.
1. The administrative completeness review time-frame begins:
 - a. For an applicant submitting an application for initial licensure, when the Department receives the application packet required in R9-16-102(A); and
 - b. For a licensed midwife applying to renew a midwifery license, when the Department receives the application packet required in R9-16-103(A).
 2. If an application is incomplete, the Department shall provide a notice of deficiencies to the applicant or midwife describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the documentation or information listed in the notice of deficiencies. An applicant or midwife shall submit to the Department the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1 for responding to a notice of deficiencies.
 3. If the applicant or midwife submits the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall provide a written notice of administrative completeness to the applicant or midwife.

4. If the applicant or midwife does not submit the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall consider the application withdrawn.
 5. When an application is complete the Department shall provide a notice of administrative completeness to the applicant or midwife.
 6. If the Department issues a notice of eligibility to take the jurisprudence test or 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(3) is specified in Table 1.1 and begins on the date of the notice of administrative completeness.
1. If an application complies with the requirements in this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.
 2. If an application does not comply with the requirements in this Article or A.R.S. Title 36, Chapter 6, Article 7, the Department shall make one comprehensive written request for additional information, unless the applicant or midwife has agreed in writing to allow the Department to submit supplemental requests for information. 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.
 3. An applicant or midwife shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information within the time specified in Table 1.1.
 4. If the applicant or midwife does not submit the additional information within the time specified in Table 1.1 or the additional information submitted by the applicant or midwife does not demonstrate compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall provide to the applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A).
 5. If the applicant or midwife submits the additional information within the time specified in Table 1.1 and the additional information submitted by the applicant or midwife demonstrates compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.

Table 1.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Fram e	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantiv e Review Time-Fram e	Time to Respond to Comprehensive Written Request
Eligibility for Jurisprudence Test (R9-16-102)	A.R.S. §§ 36-753, 36-754, and 36-755	30	15	60	15	30
Midwifery License Renewal (R9-16-103)	A.R.S. § 36-754	30	15	30	15	15

R9-16-108. Responsibilities of a Midwife; Scope of Practice

- A. A midwife shall provide midwifery services only to a healthy woman, determined through a physical assessment and review of the woman’s obstetrical history, whose expected outcome of pregnancy is most likely to be the delivery of a healthy newborn and an intact placenta.
- B. Except as provided in R9-16-111(C) or (D), a midwife who is certified by the North American Registry of Midwives as a Certified Professional Midwife may accept a client for a vaginal delivery:
 - 1. After prior Cesarean section, or
 - 2. Of a fetus in a complete breech or frank breech presentation.
- C. Before providing services to a client, a midwife shall:
 - 1. Inform a client, both orally and in writing, of:
 - a. The midwife’s scope of practice, educational background, and credentials;
 - b. If applicable to the client’s condition, the midwife’s experience with:
 - i. Vaginal birth after prior Cesarean section delivery, or
 - ii. Delivery of a fetus in a complete breech or frank breech presentation;
 - c. The potential risks; adverse outcomes; neonatal or maternal complications, including death; and alternatives associated with an at-home delivery specific to the client’s condition, including the conditions described in subsection (C)(1)(b);
 - d. The requirement for tests specified in subsections (I) and (K)(4)(c), and the potential risks for declining a test, and, if a test is declined, the need for a written assertion of a client’s decision to decline testing;
 - e. The requirement for consultation for a condition specified in R9-16-112; and

- f. The requirement for the transfer of care for a condition specified in R9-16-111; and
 2. Obtain a written informed consent for midwifery services according to R9-16-109.
- D.** A midwife shall establish an emergency care plan for the client that includes:
 1. The name, address, and phone number of:
 - a. The hospital closest to the birthing location that provides obstetrical services, and
 - b. An emergency medical services provider that provides service between the birthing location and the hospital identified in subsection (D)(1)(a);
 2. The hospital identified in subsection (D)(1)(a) is within 25 miles of the birthing location for a delivery identified in subsection (B);
 3. The signature of the client and the date signed; and
 4. The signature of the midwife and the date signed.
- E.** A midwife shall ensure the client receives a copy of the emergency care plan required in subsection (D).
- F.** A midwife shall implement the emergency care plan by immediately calling the emergency medical services provider identified in subsection (D)(1)(b) for any condition that threatens the life of the client or the client's child.
- G.** A midwife shall maintain all instruments used for delivery in an aseptic manner and other birthing equipment and supplies in clean and good condition.
- H.** A midwife shall assess a client's physical condition in order to establish the client's continuing eligibility to receive midwifery services.
- I.** During the prenatal period, the midwife shall:
 1. Until October 1, 2013, schedule or arrange for the following tests for the client within 28 weeks gestation:
 - a. Blood type, including ABO and Rh, with antibody screen;
 - b. Urinalysis;
 - c. HIV;
 - d. Hepatitis B;
 - e. Hepatitis C;
 - f. Syphilis as required in A.R.S. § 36-693;
 - g. Rubella titer;
 - h. Chlamydia; and
 - i. Gonorrhea;
 2. Until October 1, 2013, schedule or arrange for the following tests for the client:

- a. A blood glucose screening test for diabetes completed between 24 and 28 weeks of gestation;
 - b. A hematocrit and hemoglobin or complete blood count test completed between 28 and 36 weeks of gestation;
 - c. A vaginal-rectal swab for Group B Strep Streptococcus culture completed between 35 and 37 weeks of gestation;
 - d. At least one ultrasound and recommended follow-up testing to determine placental location and risk for placenta previa and placenta accrete; and
 - e. An ultrasound at 36-37 weeks gestation to confirm fetal presentation and estimated fetal weight for a breech pregnancy;
3. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in subsection (I)(1) are completed by the client within 28 weeks gestation;
 4. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in subsection (I)(2) are completed by the client;
 5. Conduct a prenatal visit at least once every 4 weeks until the beginning of 28 weeks of gestation, once every 2 weeks from the beginning of 28 weeks until the end of 36 weeks of gestation, and once a week after 36 weeks of gestation that includes:
 - a. Taking the client's weight, urinalysis for protein, nitrites, glucose and ketones; blood pressure; and assessment of the lower extremities for swelling;
 - b. Measurement of the fundal height and listening for fetal heart tones and, later in the pregnancy, feeling the abdomen to determine the position of the fetus;
 - c. Documentation of fetal movement beginning at 28 weeks of gestation;
 - d. Document of:
 - i. The occurrence of bleeding or invasive uterine procedures, and
 - ii. Any medications taken during the pregnancy that are specific to the needs of an Rh negative client;
 - e. Referral of a client for lab tests or other assessments, if applicable, based upon examination or history; and
 - f. Recommendation of administration of the drug RhoGam to unsensitized Rh negative mothers after 28 weeks, or any time bleeding or invasive uterine procedures are done, or midwife administration of RhoGam under a physician's written orders;
 6. Monitor fetal heart tones with fetoscope and document the client's report of first quickening, between 18 and 20 weeks of gestation;

7. Conduct weekly visits until signs of first quickening have occurred if first quickening has not been reported by 20 weeks of gestation;
8. Initiate a consultation if first quickening has not occurred by the end of 22 weeks of gestation; and
9. Conduct a prenatal visit of the birthing location before the end of 35 weeks of gestation to ensure that the birthing environment is appropriate for birth and that communication is available to the hospital and emergency medical services provider identified in subsection (D)(1).

J. During the intrapartum period, a midwife shall:

1. Determine if the client is in labor and the appropriate course of action to be taken by:
 - a. Assessing the interval, duration, intensity, location, and pattern of the contractions;
 - b. Determining the condition of the membranes, whether intact or ruptured, and the amount and color of fluid;
 - c. Reviewing with the client the need for an adequate fluid intake, relaxation, activity, and emergency management; and
 - d. Deciding whether to go to client's home, remain in telephone contact, or arrange for transfer of care or consultation;
2. Contact the hospital identified in subsection (D)(1)(a) according to the policies and procedures established by the hospital regarding communication with midwives when the client begins labor and ends labor;
3. During labor, assess the condition of the client and fetus upon initial contact, every half hour in active labor until completely dilated, and every 15 to 20 minutes during pushing, following rupture of the amniotic bag, or until the newborn is delivered, including:
 - a. Initial physical assessment and checking of vital signs every 2 to 4 hours of the client;
 - b. Assessing fetal heart tones every 30 minutes in active first stage labor, and every 15 minutes during second stage, following rupture of the amniotic bag, or with any significant change in labor patterns;
 - c. Periodically assessing contractions, fetal presentation, dilation, effacement, and fetal position by vaginal examination;
 - d. Maintaining proper fluid balance for the client throughout labor as determined by urinary output and monitoring urine for presence of ketones; and
 - e. Assisting in support and comfort measures to the client and family;

4. For deliveries described in subsection (B), during labor determine:
 - a. For primiparas, the progress of active labor by monitoring whether dilation occurs at an average of 1 centimeter per hour until completely dilated, and a second stage does not exceed 2 hours, if applicable;
 - b. Normal progress of active labor for multigravidas by monitoring whether dilation occurs at an average of 1.5 to 2 centimeters per hour until completely dilated, and a second stage does not exceed 1 hour, if applicable; or
 - c. The progress of active labor according to the Management Guidelines recommended by the American Congress of Obstetricians and Gynecologists;
 5. After delivery of the newborn:
 - a. Assess the newborn at 1 minute and 5 minutes to determine the Apgar scores;
 - b. Physically assess the newborn for any abnormalities;
 - c. Inspect the client's perineum, vagina, and cervix for lacerations;
 - d. Deliver the placenta within 1 hour and assess the client for signs of separation, frank or occult bleeding; and
 - e. Examine the placenta for intactness and to determine the number of umbilical cord vessels; and
 6. Recognize and respond to any situation requiring immediate intervention.
- K.** During the postpartum period, the midwife shall:
1. During the 2 hours after delivery of the placenta, provide the following care to the client:
 - a. Every 15 to 20 minutes for the first hour and every 30 minutes for the second hour:
 - i. Take vital signs of the client,
 - ii. Perform external massage of the uterus, and
 - iii. Evaluate bleeding;
 - b. Assist the client to urinate within 2 hours following the birth, if applicable;
 - c. Evaluate the perineum, vagina, and cervix for tears, bleeding, or blood clots;
 - d. Assist with maternal newborn and infant bonding;
 - e. Assist with initial breast feeding, instructing the client in the care of the breast, and reviewing potential danger signs, if appropriate;
 - f. Provide instruction to the family about adequate fluid and nutritional intake, rest, and the types of exercise allowed, normal and abnormal bleeding, bladder and bowel function, appropriate baby care, signs and symptoms of postpartum depression, and any symptoms that may pose a threat to the health or life of the

- client or the client's newborn and appropriate emergency phone numbers;
- g. Recommend or administer under physician's written orders, the drug RhoGam to an unsensitized Rh-negative mother who delivers an Rh-positive newborn. Administration shall occur not later than 72 hours after birth; and
 - h. Document any medications taken by the client in the client's record to an unsensitized Rh-negative client who delivers an Rh-positive newborn;
2. During the 2 hours after delivery of the placenta, provide the following care to the newborn:
 - a. Perform a newborn physical exam to determine the newborn's gestational age and any abnormalities;
 - b. Comply with the requirements in A.A.C. R9-6-332;
 - c. Recommend or administer Vitamin K under physician's written orders to the newborn. Administration shall occur not later than 72 hours after birth; and
 - d. Document the administration of any medications or vitamins to the newborn in the newborn's record according to the physician's written orders;
 3. Evaluate the client or newborn for any abnormal or emergency situation and seek consultation or intervention, if applicable, according to these rules; and
 4. Re-evaluate the condition of the client and newborn between 24 and 72 hours after delivery to determine whether the recovery is following a normal course, including:
 - a. Assessing baseline indicators such as the client's vital signs, bowel and bladder function, bleeding, breasts, feeding of the newborn, sleep/rest cycle, activity with any recommendations for change;
 - b. Assessing baseline indicators of well-being in the newborn such as vital signs, weight, cry, suck and feeding, fontanel, sleeping, and bowel and bladder function with documentation of meconium, and providing any recommendations for changes made to the family;
 - c. Submitting blood obtained from a heel stick to the newborn to the state laboratory for screening according to A.R.S. § 36-694(B) and 9 A.A.C. 13, Article 2, unless a written refusal is obtained from the client and documented in the client's record and the newborn's record; and
 - d. Recommending to the client that the client secure medical follow-up for her newborn.
- L.** A midwife shall file a birth certificate with the local registrar within seven calendar days after the birth of the newborn.

M. Subsections (B), (C)(1)(b), (C)(1)(d) and (J)(2) and (4) are effective July 1, 2014.

R9-16-109. Informed Consent for Midwifery Services

A. A midwife shall obtain a written informed consent for midwifery services in a format provided by the Department that contains:

1. The midwife's:
 - a. Name,
 - b. Telephone number,
 - c. License number, and
 - d. E-mail address;
2. The client's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Date of birth; and
 - e. E-mail address, if applicable;
3. An attestation that the client was:
 - a. Provided the information required in R9-16-108(C)(1);
 - b. Informed of the emergency care plan as required in R9-16-108(D); and
 - c. Given an opportunity to have questions answered, have an understanding of the information provided, and choose to continue with midwifery services; and
4. The signatures of the client and midwife and date signed.

B. A midwife shall ensure that the written informed consent for midwifery services is placed in the client file.

C. A midwife shall ensure that a copy of the written informed consent for midwifery services is provided to the:

1. Client, and
2. Department within five calendar days after a Department request.

D. This Section is effective October 1, 2013.

R9-16-110. Assertion to Decline Required Tests

A. Except for R9-16-108(I)(1)(f), if the client declines a test required in R9-16-108(I)(3) and (4), a midwife shall obtain a written assertion of a client's decision to decline a required test in a format provided by the Department, that contains:

1. The midwife's:
 - a. Name,
 - b. Telephone number,
 - c. License number, and
 - d. E-mail address;
 2. The client's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Date of birth; and
 - e. E-mail address, if applicable;
 3. The required test being declined by the client;
 4. Additional information as required by the Department;
 5. An attestation that the client:
 - a. Was provided the information as required in R9-16-108(C)(1)(d), and
 - b. Is declining testing; and
 6. The signatures of the client and midwife and date signed.
- B.** A midwife shall ensure that the written assertion of the decision to decline a test is placed in the client file.
- C.** A midwife shall ensure that a copy of the written assertion of the decision to decline a test is provided to the:
1. Client, and
 2. Department within five calendar days after a Department request.
- D.** This Section is effective October 1, 2013.

R9-16-111. Prohibited Practice; Transfer of Care

- A.** A midwife shall not provide midwifery services in a location that has the potential to cause harm to the client or the client's child.
- B.** A midwife shall not accept for midwifery services or continue midwifery services for a client who has or develops any of the following:
1. A previous surgery that involved:
 - a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
 - b. A previous uterine surgery that enters the myometrium;
 2. Multiple fetuses;

3. Placenta previa or placenta accreta;
4. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
5. Deep vein thrombosis or pulmonary embolism;
6. Uncontrolled gestational diabetes;
7. Insulin-dependent diabetes;
8. Hypertension;
9. Rh disease with positive titers;
10. Active:
 - a. Tuberculosis;
 - b. Syphilis;
 - c. Genital herpes at the onset of labor;
 - d. Hepatitis until treated and recovered, following which midwifery services may resume; or
 - e. Gonorrhea until treated and recovered, following which midwifery services may resume;
11. Preeclampsia or eclampsia persisting after the second trimester;
12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
13. A persistent hemoglobin level below 10 grams or a hematocrit below 30 during the third trimester;
14. A pelvis that will not safely allow a baby to pass through during labor;
15. A serious mental illness;
16. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client:
 - a. Alcohol,
 - b. Narcotics, or
 - c. Other drugs;
17. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
18. Labor beginning before the beginning of 36 weeks gestation;
19. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
20. Gestational age greater than 34 weeks with no prior prenatal care;
21. A gestation beyond 42 weeks;

22. Presence of ruptured membranes without onset of labor within 24 hours;
 23. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
 24. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;
 25. A postpartum hemorrhage of greater than 500 milliliters in the current pregnancy; or
 26. A non-bleeding placenta retained for more than 60 minutes.
- C.** A midwife shall not perform a vaginal delivery after prior Cesarean section for a client who:
1. Had:
 - a. More than one previous Cesarean section;
 - b. A previous Cesarean section:
 - i. With a classical, vertical, or unknown uterine incision;
 - ii. Within 18 months before the expected delivery;
 - iii. With complications, including uterine infection; or
 - iv. Due to failure to progress as a result of cephalopelvic insufficiency; or
 - c. Complications during a previous vaginal delivery after a Cesarean section; or
 2. Has a fetus:
 - a. With fetal anomalies, confirmed by an ultrasound; or
 - b. In a breech presentation.
- D.** A midwife shall not perform a vaginal delivery of a fetus in a breech presentation for a client who:
1. Had a previous:
 - a. Unsuccessful vaginal delivery or other demonstration of an inadequate maternal pelvis, or
 - b. Cesarean section; or
 2. Has a fetus:
 - a. With fetal anomalies, confirmed by an ultrasound;
 - b. With an estimated fetal weight less than 2500 grams or more than 3800 grams; or
 - c. In an incomplete breech presentation.
- E.** If the client has any of the conditions in subsections (B) through (D), a midwife shall:
1. Document the condition in the client record, and
 2. Initiate transfer of care.
- F.** A midwife shall not perform any operative procedures except as provided in R9-16-113.
- G.** A midwife shall not:
1. Use any artificial, forcible, or mechanical means to assist birth; or

2. Attempt to correct fetal presentations by external or internal movement of the fetus.
- H.** A midwife shall not administer drugs or medications except as provided in R9-16-108(I)(5)(f), (K)(1)(g), (K)(2)(c), or R9-16-113.
- I.** Except as provided in R9-16-113, a midwife shall:
1. Discontinue midwifery services and transfer care of a newborn in which any of the following conditions are present:
 - a. Birth weight less than 2000 grams;
 - b. Pale, blue, or gray color after 10 minutes;
 - c. Excessive edema;
 - d. Major congenital anomalies; or
 - e. Respiratory distress; and
 2. Document the condition in subsection (I)(1) in the newborn record.

R9-16-112. Required Consultation

- A.** A midwife shall obtain a consultation at the time a client is determined to have any of the following during the current pregnancy:
1. A positive culture for Group B Streptococcus;
 2. History of seizure disorder;
 3. History of stillbirth, premature labor, or parity greater than 5;
 4. Age younger than 16 years;
 5. A primigravida older than 40 years of age;
 6. Failure to auscultate fetal heart tones by the beginning of 22 weeks gestation;
 7. Failure to gain 12 pounds by the beginning of 30 weeks gestation or gaining more than 8 pounds in any two-week period during pregnancy;
 8. Greater than 1+ sugar, ketones, or protein in the urine on two consecutive visits;
 9. Excessive vomiting or continued vomiting after the end of 20 weeks gestation;
 10. Symptoms of decreased fetal movement;
 11. A fever of 100.4° F or 38° C or greater measured twice at 24 hours apart;
 12. Tender uterine fundus;
 13. Effacement or dilation of the cervix, greater than a fingertip, accompanied by contractions, prior to the beginning of 36 weeks gestation;
 14. Measurements for fetal growth that are not within 2 centimeters of the gestational age;
 15. Second degree or greater lacerations of the birth canal;
 16. Except as provided in R9-16-111(B)(19), an abnormal progression of labor;

17. An unengaged head at 7 centimeters dilation in active labor;
 18. Failure of the uterus to return to normal size in the current postpartum period;
 19. Persistent shortness of breath requiring more than 24 breaths per minute, or breathing which is difficult or painful;
 20. Gonorrhea;
 21. Chlamydia;
 22. Syphilis;
 23. Heart disease;
 24. Kidney disease;
 25. Blood disease; or
 26. A positive test result for:
 - a. HIV,
 - b. Hepatitis B, or
 - c. Hepatitis C.
- B.** A midwife shall obtain a consultation at the time a newborn demonstrates any of the following conditions:
1. Weight less than 2500 grams or 5 pounds, 8 ounces;
 2. Congenital anomalies;
 3. An Apgar score less than 7 at 5 minutes;
 4. Persistent breathing at a rate of more than 60 breaths per minute;
 5. An irregular heartbeat;
 6. Persistent poor muscle tone;
 7. Less than 36 weeks gestation or greater than 42 weeks gestation by gestational exam;
 8. Yellowish-colored skin within 48 hours;
 9. Abnormal crying;
 10. Meconium staining of the skin;
 11. Lethargy;
 12. Irritability;
 13. Poor feeding;
 14. Excessively pink coloring over the entire body;
 15. Failure to urinate or pass meconium in the first 24 hours of life;
 16. A hip examination which results in a clicking or incorrect angle;
 17. Skin rashes not commonly seen in the newborn; or
 18. Temperature persistently above 99.0° or below 97.6° F.

- C. The midwife shall inform the client of the consultation required in subsections (A) or (B) and recommendations of the physician or certified nurse midwife.
- D. The midwife shall document the consultation required in subsections (A) or (B) and recommendations received in the client record or newborn record.

R9-16-113. Emergency Measures

- A. In an emergency situation in which the health or safety of the client or newborn are determined to be at risk, a midwife:
 - 1. Shall ensure that an emergency medical services provider is called; and
 - 2. May perform the following procedures as necessary:
 - a. Cardiopulmonary resuscitation of the client or newborn with a bag and mask;
 - b. Administration of oxygen at no more than 8 liters per minute via mask for the client and 5 liters per minute for the newborn via neonatal mask;
 - c. Episiotomy to expedite the delivery during fetal distress;
 - d. Suturing of episiotomy or tearing of the perineum to stop active bleeding, following administration of local anesthetic, contingent upon consultation with a physician or certified nurse midwife, or physician's written orders;
 - e. Release of shoulder dystocia by utilizing:
 - i. Hyperflexion of the client's legs to the abdomen,
 - ii. Application of external pressure suprapubically,
 - iii. Rotation of the nonimpacted shoulder until the impacted shoulder is released,
 - iv. Delivery of the posterior shoulder,
 - v. Application of posterior pressure on the anterior shoulder, or
 - vi. Positioning of the client on all fours with the back arched;
 - f. Manual exploration of the uterus for control of severe bleeding; or
 - g. Manual removal of placenta.
- B. A licensed midwife may administer a maximum dose of 20 units of pitocin intramuscularly, in 10-unit dosages each, 30 minutes apart, to a client for the control of postpartum hemorrhage, contingent upon physician or certified nurse midwife consultation and written orders by a physician, and arrangements for immediate transport of the client to a hospital.
- C. A midwife shall document in the client's record any medications taken by a client for the control of postpartum hemorrhage.

R9-16-114. Midwife Report after Termination of Midwifery Services

- A. A midwife shall complete a midwife report for each client, in a format provided by the Department, that includes the following:
1. The midwife's:
 - a. First name,
 - b. Last name, and
 - c. License number;
 2. The client's:
 - a. Date of birth;
 - b. Client number;
 - c. Date of last menstrual period;
 - d. Estimated date of delivery;
 - e. Gravida (number);
 - f. Para (number); and
 - g. If applicable, whether the client had a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation;
 3. A description of the maternal outcome, including any complications;
 4. If a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation:
 - a. Rate of dilation, and
 - b. Duration of second stage labor;
 5. If applicable, the newborn's:
 - a. Date of birth;
 - b. Gender;
 - c. Weight;
 - d. Length;
 - e. Head circumference;
 - f. Designation of average, small, or large for gestational age;
 - g. Apgar score at 1 minute;
 - h. Apgar score at 5 minutes;
 - i. Existence of complications;
 - j. Description of complications, if applicable;

- k. Birth certificate filing date; and
 - l. Birth certificate number, if available;
 - 6. Whether the client required transfer of care and, if applicable:
 - a. Method of transport,
 - b. Type of facility or individual to which the midwife transferred care of the client,
 - c. Name of destination,
 - d. Time arrived at destination,
 - e. Confirmation the emergency care plan was utilized, and
 - f. Medical reason for transfer of care;
 - 7. The date midwifery services were terminated;
 - 8. Reason for the termination of midwifery services;
 - 9. If termination of midwifery services was due to a medical condition, the specific medical condition;
 - 10. Whether information was provided on newborn screening; and
 - 11. Whether newborn screening tests were ordered as required in A.R.S. § 36-694.
- B.** The midwife shall submit a midwife report for a client to the Department within 30 calendar days after the termination of midwifery services to the client.

R9-16-115. Client and Newborn Records

- A.** A midwife shall ensure that a record is established and maintained according to A.R.S. §§ 12-2291 and 12-2297 for each:
 - 1. Client, and
 - 2. Newborn delivered by the midwife from a client.
- B.** A midwife shall ensure that a record for each client includes the following:
 - 1. The client's full name, date of birth, address, and client number;
 - 2. Names, addresses, and telephone numbers of the client's spouse or other individuals designated by the client to be contacted in an emergency;
 - 3. Written informed consent for midwifery services, as required in R9-16-108(C)(2);
 - 4. Assertion to decline required tests, as required in R9-16-110(A)(3);
 - 5. A copy of the emergency care plan, as required in R9-16-108(E);
 - 6. The date the midwife began providing midwifery services to the client;
 - 7. The date the client is expected to deliver the newborn;
 - 8. The date the newborn was delivered, if applicable;
 - 9. An initial assessment of the client to:

- a. Determine whether the client has a history of a condition or circumstance that would preclude care of the client by the midwife, as specified in R9-16-111; and
 - b. Determine the:
 - i. Number and outcome of previous pregnancies, and
 - ii. Number of previous medical or midwife visits the client has had during the current pregnancy;
 - 10. Progress notes documenting the midwifery services provided to the client;
 - 11. For a delivery identified in R9-16-108(B):
 - a. Rate of dilation, and
 - b. Duration of second stage labor;
 - 12. Laboratory and diagnostic reports, according to R9-16-108(I);
 - 13. Documentation of consultations as required in R9-16-112, including:
 - a. Reason for the consultation,
 - b. Name of physician or certified nurse midwife,
 - c. Date of consultation,
 - d. Time of consultation, and
 - e. Recommendation made by the physician or certified nurse midwife;
 - 14. Written reports received from consultations as required in R9-16-112;
 - 15. A description of any conditions or circumstances arising during the pregnancy that required the transfer of care;
 - 16. The name of the physician, certified nurse midwife, or hospital to which the care of the client was transferred, if applicable;
 - 17. Documentation of medications or vitamins taken by the client;
 - 18. Documentation of medications or vitamins administered to the client and the physician's written orders for the medications or vitamins;
 - 19. The outcome of the pregnancy;
 - 20. The date the midwife stopped providing midwifery services to the client; and
 - 21. Instructions provided to the client before the midwife stopped providing midwifery services to the client.
- C. A midwife shall ensure that a record for each newborn includes the following:
- 1. The full name, date of birth, and address of the newborn's mother;
 - 2. The newborn's:
 - a. Date of birth,
 - b. Gender,

- c. Weight at birth,
- d. Length at birth, and
- e. Apgar scores at 1 minute and 5 minutes after birth;
- 3. The newborn's estimated gestational age at birth;
- 4. Progress notes documenting the midwifery services provided to the newborn;
- 5. Laboratory and diagnostic reports, as required in R9-16-108(I);
- 6. Documentation of consultations as required in R9-16-112:
 - a. Reason for the consultation,
 - b. Name of physician or certified nurse midwife,
 - c. Date of consultation,
 - d. Time of consultation, and
 - e. Recommendation made by the physician or certified nurse midwife;
- 7. Written reports received from consultations as required in R9-16-112;
- 8. A description of any conditions or circumstances arising during or after the newborn's birth that required the transfer of care;
- 9. The name of the physician, certified nurse midwife, or hospital to which the care of the newborn was transferred, if applicable;
- 10. Documentation of medications or vitamins taken by the newborn;
- 11. Documentation of medications or vitamins administered to the newborn and the physician's written orders for the medications or vitamins;
- 12. Documentation of newborn screening, including when the specimen collection kit, as defined in A.A.C. R9-13-201, was submitted and results received, as required in R9-16-108(K)(4)(c);
- 13. The date the midwife stopped providing midwifery services to the newborn; and
- 14. Instructions provided to the client about the newborn before the midwife stopped providing midwifery services to the newborn.

R9-16-116. Denial, Suspension, or Revocation of License; Civil Penalties; Procedures

In addition to the grounds specified in A.R.S. §§ 36-756 and 13-904(E), the Department may deny, suspend, or revoke a license permanently or for a definite period of time, and may assess a civil penalty for each violation, for any of the following causes:

- 1. Practicing under a false name or alias so as to interfere with or obstruct the investigative or regulatory process,
- 2. Practicing under the influence of drugs or alcohol,

3. Falsification of records,
4. Obtaining any fee for midwifery services by fraud or misrepresentation,
5. Permitting another to use the midwife's license, or
6. Knowingly providing false information to the Department.

Statutory Authority got Rules in 9 A.A.C. 16, Article 1

36-104. Powers and duties

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

1. Administer the following services:
 - (a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds utilized by the department.
 - (b) Public health support services, which shall include at a minimum:
 - (i) Consumer health protection programs that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.
 - (ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.
 - (iii) Laboratory services programs.
 - (iv) Health education and training programs.
 - (v) Disposition of human bodies programs.
 - (c) Community health services, which shall include at a minimum:
 - (i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.
 - (ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.
 - (iii) Children with physical disabilities services programs.
 - (iv) Programs for the prevention and early detection of an intellectual disability.
 - (d) Program planning, which shall include at least the following:
 - (i) An organizational unit for comprehensive health planning programs.
 - (ii) Program coordination, evaluation and development.
 - (iii) Need determination programs.
 - (iv) Health information programs.
2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.
3. Make rules and regulations for the organization and proper and efficient operation of the department.
4. Determine when a health care emergency or medical emergency situation exists or occurs within the state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
5. Provide a system of unified and coordinated health services and programs between the state and county governmental health units at all levels of government.
6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective utilization of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are no lapsing and do not revert to the state general fund at the close of the fiscal year.
23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for

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

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

- A. The director shall:
1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
 2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.
 7. Prepare sanitary and public health rules.
 8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be

competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.
 2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- E. The compensation of all personnel shall be as determined pursuant to section 38-611.
- F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
- G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- H. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
 2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
 3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
 4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
 - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
 - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.
 - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
 - (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
 - (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
 6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
 7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or

transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.
 9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
 10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
 11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.
 12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
 13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.
- I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
 - J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

- K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- N. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption exempt from the rules prescribed in subsection H of this section.

36-751. Definitions

In this article, unless the context otherwise requires:

- 1. "Department" means the department of health services.
- 2. "Director" means the director of the department of health services.
- 3. "Midwife" means a person who delivers a baby or provides health care related to pregnancy, labor, delivery and postpartum care of the mother and her infant.

36-752. Licensure; exceptions

- A. Except as provided in subsection B of this section, no person may act as a midwife without being licensed pursuant to this article.
- B. The following persons are exempt from the licensure requirements of this section:
 - 1. A physician licensed pursuant to title 32 who is permitted within his scope of practice to deliver infants.
 - 2. A registered nurse certified by the state board of nursing as a qualified nurse-midwife.
 - 3. A person acting under the direction and supervision of a physician licensed pursuant to title 32 who is permitted within his scope of practice to deliver infants.
 - 4. A student of midwifery in the course of taking an internship, preceptorship or clinical training program, who is under the direction and supervision of a midwife licensed pursuant to this article.
 - 5. A person who has no prearranged agreement to provide delivery assistance, but who delivers a baby as a result of an emergency situation.
 - 6. A mother or father delivering their own infant.

36-753. Application for license as midwife

A person who desires to obtain a license to practice midwifery shall make written application to the director of the department of health services, upon a form to be supplied by the director and shall furnish such information as may be required by the director.

36-754. Licensing of midwives; renewal of license

- A. The director shall grant a midwife's license to a person meeting the qualifications prescribed by this article and rules adopted pursuant to this article and paying applicable fees.
- B. A license is valid for two years and may be renewed biennially on application to the director and payment of applicable fees.

- C. A person shall file an application for renewal at least thirty days and no more than sixty days before the expiration date of the current license.

36-755. Powers and duties of the director

- A. The director may adopt rules necessary for the proper administration and enforcement of this article.
- B. The director shall, by rule:
 - 1. Define and describe, consistent with this article and the laws of this state, the duties and limitations of the practice of midwifery.
 - 2. Adopt standards with respect to the practice of midwifery designed to safeguard the health and safety of the mother and child.
 - 3. Establish the criteria for granting, denying, suspending and revoking a license in order to protect the health and safety of the mother and child.
 - 4. Describe and define reasonable and necessary minimum qualifications for midwives, including:
 - (a) The ability to read and write.
 - (b) Knowledge of the fundamentals of hygiene.
 - (c) The ability to recognize abnormal or potentially abnormal conditions during pregnancy, labor and delivery and following birth.
 - (d) Knowledge of the laws of this state concerning reporting of births, prenatal blood tests and newborn screening and of the rules pertaining to midwifery.
 - (e) Education requirements.
 - (f) Age requirements.
 - (g) Good moral character.

36-756. Grounds for denial of license and disciplinary action; hearing; appeal; civil penalties; injunctions

- A. The director may deny, suspend or revoke the license of any midwife who:
 - 1. Violates any provision of this article or the rules adopted under this article.
 - 2. Has been convicted of a felony or a misdemeanor involving moral turpitude.
 - 3. Indulges in conduct or a practice detrimental to the health or safety of the mother and child.
- B. The department may deny a license without holding a hearing. An applicant may appeal this decision pursuant to title 41, chapter 6, article 10.
- C. The department shall conduct any hearing to suspend or revoke a license in accordance with the procedures established pursuant to title 41, chapter 6, article 10. If the director determines at the conclusion of a hearing that grounds exist to suspend or revoke a license, he may do so permanently or for any period of time he deems appropriate and under any conditions that he deems appropriate. An applicant for licensure or a licensee may appeal the final decision of the director.
- D. In addition to other disciplinary action, the director may assess a civil penalty of not more than one hundred dollars for each violation of this article or a rule adopted pursuant to this article as determined by a hearing held pursuant to this section. Each day that a violation continues constitutes a separate offense. The attorney general or the county attorney may bring an action in the name of this state to enforce a civil penalty. The action shall be filed in the superior court or in justice court in the county where the violation occurred.
- E. In addition to other available remedies, the director may apply to the superior court for an injunction to restrain a person from violating a provision of this article or a rule adopted pursuant to this article. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond. The defendant may be served in any county of this state. The action shall be brought on behalf of the director by the attorney general or the county attorney of the county in which the violation is occurring.

36-756.01. Investigations; right to examine evidence; subpoenas; confidentiality

- A. The director may investigate information that indicates that a person is violating this article. In connection with an investigation, the department may examine and copy documents and other physical evidence wherever located that relate to the conduct or competency of a midwife pursuant to the requirements of this article.
- B. Pursuant to an investigation or an administrative proceeding, the director may issue subpoenas to compel the testimony of witnesses or to demand the production of relevant documents and other physical evidence. If a person refuses to comply with a subpoena, the director may apply to the superior court for an order to compel compliance.
- C. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films and oral statements relating to patient examinations, findings and treatment, that are kept by the director pursuant to an investigation are not available to the public. The director shall keep confidential the names of patients whose records are reviewed during the course of an investigation or hearing.

36-758. Fees

The director, by rule, shall establish and collect nonrefundable fees that do not exceed:

- 1. Twenty-five dollars for an initial application.
- 2. Fifty dollars for an initial license.
- 3. Two hundred fifty dollars for testing.
- 4. Fifty dollars for license renewal.
- 5. Ten dollars for a duplicate license.

36-759. Use of title; prohibitions

It is a violation of this article for a person who is not licensed pursuant to this article to use the title "licensed midwife" and the abbreviation "L.M." or to use any other words, letters, signs or figures to indicate that the person is a licensed midwife.

36-760. Persons and acts not affected by this article

The provisions of this article do not apply to a person who provides information and support in preparation for a normal labor and delivery and assists in the delivery of a baby if that person does not do the following:

- 1. Advertise as a midwife or as a provider of midwife services.
- 2. Accept any form of compensation for midwife services.
- 3. Use any words, letters, signs or figures to indicate that the person is a midwife.

41-1073. Time frames; exception

- A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.
- B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.
- C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

- D. In establishing time frames, agencies shall consider all of the following:
 - 1. The complexity of the licensing subject matter.
 - 2. The resources of the agency granting or denying the license.
 - 3. The economic impact of delay on the regulated community.
 - 4. The impact of the licensing decision on public health and safety.
 - 5. The possible use of volunteers with expertise in the subject matter area.
 - 6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
 - 7. The possible increased cooperation between the agency and the regulated community.
 - 8. Increased agency flexibility in structuring the licensing process and personnel.
- E. This article does not apply to licenses issued either:
 - 1. Pursuant to tribal state gaming compacts.
 - 2. Within seven days after receipt of initial application.
 - 3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

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

41-1075. Compliance with substantive review time frame

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

41-1076. Compliance with overall time frame

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

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

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 16, Article 4, Registration of Environmental Health Sanitarians



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 11, 2021

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 4, Registration of Environmental Health Sanitarians

Summary:

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 16, Article 4, regarding the Registration of Environmental Health Sanitarians. A "sanitarian" is defined in A.R.S. § 36-136.01(J) as "a person who by education or experience in the physical, biological and sanitary sciences is qualified to carry out educational, investigational and technical duties in the field of environmental health."

In the previous 5YRR for these rules, which the Council approved in September 2016, the Department stated that it did not propose to take any action on the rules, but said that if an issue arose that prevented the Department from meeting its regulatory objectives, it would amend the rules. In this 5YRR, the Department indicates that it amended the rules twice since the last 5YRR: (1) in 2017 to address a statewide shortage of registered sanitarians limiting county health departments (CHDs) from conducting functions and duties, including enforcement actions, by delegation agreements between the Department and the CHDs; and (2) in 2020 to update the requirements to allow for computer-based sanitarian examination provided by the National Environmental Health Association (NEHA) to be available for applicants.

Proposed Action

The Department does not propose to take any action on the rules under review.

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:

Since the last 5YRR in 2016, the Department amended the rules through rulemakings in 2017 and 2020, both of which included economic, small business, and consumer impact statements. DHS states that the economic impact of the rules does not differ from what it determined in the economic impact statements prepared in 2017 and 2020.

In 2017, the Department expected to incur moderate costs for technical resources through the regular rulemaking process. The Department anticipated that CHDs would experience a moderate decrease in cost, and that registered sanitarians would most likely not incur costs as a result of the rulemaking. Applicants applying to take the sanitarian examination incurred a nominal increase in the cost for the examination, increasing from \$110 to \$140. For the 2020 rulemaking, the Department again anticipated moderate costs for technical resources.

The stakeholders include: the Department, CHDs, applicants seeking registration as an environmental health sanitarian, and the general public.

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

The Department states that the benefits to regulated persons outweigh the probable costs of the rules and that the rules impose the least burden and costs to regulated persons.

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?

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

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.

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?**

No. The Department indicates that there are no corresponding federal laws to the rules under review.

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 pursuant to the requirements of A.R.S. § 36-136.01 (Sanitarians council; members; powers; fees; examinations; continuing education; exceptions; renewal; definition), a general permit is not applicable pursuant to the exemption in A.R.S. § 41-1037(A)(3). Upon review of the applicable statutes, Council staff agrees.

11. **Conclusion**

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

May 6, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair

Arizona Department of Administration

100 N. 15th Avenue, Suite 305

Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 16, Article 4 Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 16, Article 4, which is due on May 31, 2021.

The Department of Health Services reviewed the following rules with the intention that they do not expire pursuant to A.R.S. § 41-1056(J).

The Department of Health Services hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Teresa Koehler at 602-364-0813 or Teresa.Koehler@azdhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "RL", is written over the name Robert Lane.

Robert Lane
Director's Designate

RL:tk

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 16. Department of Health Services – Occupational Licensing

Article 4. Registration of Environmental Health Sanitarians

May 2021

1. Authorization of the rule by existing statutes

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

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

2. The objective of each rule:

Rule	Objective
R9-16-401	The objective of the Article 1, <u>Definitions</u> , rule is to provide definitions to assist readers' understanding of the requirements and content provided in the Article 4.
R9-16-402	The objective of the rule, <u>Eligibility and Responsibilities for a Registered Environmental Health Sanitarian</u> , is to specify requirements an individual shall meet prior to applying for registration as a "registered sanitarian" and clarify the tasks and duties an environmental health sanitarian may provide once a registered environmental health sanitarian.
R9-16-403	The objective of the rule, <u>Requirements for an Environmental Health Sanitarian Aide</u> , is to identify tasks and duties an individual who performs and assists with environmental health services under the supervision of a registered environmental health sanitarian. The rule includes tasks that an environmental health sanitarian aide may not do and the duties and responsibilities of an individual who provides supervision to an environmental health sanitarian aide.
R9-16-404	The objective of the rule, <u>Continuing Education Requirements; Continuing Education Deferral; and Renewal Extension</u> , is to clarify requirements for a registered environmental health sanitarian reporting continuing education (CE) that develop and improve professional competence related to environmental health. The rule specifies the number of CE hours required and specifies requirements for reporting completed CE hours; for requesting to defer CE hours due to personal or family member illness, and for submitting a notice for renewal extension from a registered environmental health sanitarian called to active military.
R9-16-405	The objective of the rule, <u>Application for Sanitarian Examination and Registration</u> , is to clarify application requirements for an individual wishing to be a registered environmental health sanitarian. The rule specifies the necessary information for the Department to determine whether an applicant has adequate qualifications to pass a sanitarian examination and is compliant with other laws that will prevent an applicant's approval, such as having been convicted of a felony or misdemeanor related to occupation as a sanitarian.

R9-16-406	The objective of the rule, <u>Application for Renewal</u> , is to clarify renewal application requirements for a registered environmental health sanitarian wishing to retain registration as an environmental health sanitarian. The rule specifies the necessary information for the Department to determine whether a registered environmental health sanitarian's contact information and continuing education is current, and whether compliant with other laws that will prevent an applicant's approval for renewal registration.
R9-16-407	The objective of the rule, <u>Time-frames</u> , is to specify Department approvals identified in Article 4. The approvals include: sanitarian examination, initial application, registration by reciprocity, deferred continuing education, and renewal registration.
Table 4.1	The objective of the table, <u>Time-frames Table 4.1</u> , is to establish durations for completing an administrative completeness review, a substantive review, and the overall time-frame for all types of approvals identified in R9-16-407.
R9-16-408	The objective of the rule, <u>Request for a Change</u> , is to clarify that a registered environmental health sanitarian shall submit a written notice to the Department when a registered environmental health sanitarian's legal name changes.
R9-16-409	The objective of the rule, <u>Denial, Suspension, or Revocation</u> , is to clarify the criteria used by the Department when determining whether to deny an initial application or renewal application and whether to suspend or revoke an environmental health sanitarian registration.

3. **Are the rules effective in achieving their objectives?** Yes 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
	The rules are effective in achieving their respective objectives.

4. **Are the rules consistent with other rules and statutes?** Yes 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
	The rules are consistent with other state statutes and rules.

5. **Are the rules enforced as written?** Yes 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
	The rules are enforced as written without difficulty.

6. **Are the rules clear, concise, and understandable?** Yes 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
	The rules are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
	The Department did not receive any written criticisms of the rules within the last five years.	

8. **Economic, small business, and consumer impact comparison (summary):**

Arizona Revised Statutes (A.R.S.) § 36-136.01 requires the Arizona Department of Health Services (Department) to establish a sanitarians council and establish rules for the registration of sanitarians. The Department adopted at Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 4 rules to implement A.R.S. § 36-136.01. The rules were originally promulgated in September 1976. In 2017, all Article 4 rules were amended by notice of final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 and specific rules in R9-16-401, R9-16-402, R9-16-405, and R9-16-407 were again amended by notice of final rulemaking at 26 A.A.R. 1875, effective September 2, 2010. The Department submitted an economic, small business, and consumer impact statement (EIS) for the 2017 and 2020 notices of final rulemakings. The rules in 9 A.A.C. 16, Article 4 contain definitions; sanitarians' eligibility and responsibilities; requirements for sanitarian aides; continuing education requirements; application requirements for examination, sanitarian registration, and renewal registration; time-frames; and criteria for the denial, suspension, or revocation of a sanitarian registration.

In the 2017 EIS, the Department identified person directly affected as the Department, county health departments (CHDs), registered sanitarians, applicants seeking registration as a sanitarian, individuals seeking information about the sanitarian profession, individuals employed as a sanitarian aide, and the general public. In the 2020 EIS, the Department identified person directly affected as the Department, CHDs, applicants seeking registration as an environmental health sanitarian, and the general public. In both the 2017 EIS and the 2020 EIS, the Department designated annual costs and revenues as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. Under the rules in 9 A.A.C. 16, Article 4, include nine Sections that regulate the approval of applicants for taking a sanitarian examination; establish requirements for environmental health sanitarian aides, environmental

health registration as a sanitarian, including applicants by reciprocity; requests to defer continuing education and notice of renewal extension; and registered environmental health sanitarian renewals.

In fiscal year 2020, the Department received 54 sanitarian registration applications and the Sanitarian Council approved 51 applicants for registration as an environmental health sanitarian. The Department received 530 renewal applications, and of the 530 received, the Department approved all applicants for renewal. Currently, Arizona has 530 active registered environmental health sanitarians and 189 are employed full-time at the Arizona County Health Departments, ASU, and the Department. In addition, Arizona County Health Departments also employs 15.5 environmental health sanitarian aides. Employed registered environmental health sanitarians and environmental health sanitarian aides conducted a total of 98,773 routine inspections at 52,940 regulated facilities during FY 2020. Regulated facilities include food establishments, swimming pools, recreational vehicles and parks, public school grounds, public accommodations, bottled water, children's camps, and camp grounds.

The Department in the 2017 rulemaking addressed a statewide shortage of registered sanitarians limiting the CHDs from conducting the functions and duties, including enforcement actions required by delegation agreements between the CHDs and the Department. The Article 4 rulemaking amended the rules to expand the eligibility criteria for qualified individuals who may take the sanitarian examination to increase the number of applicants approved for registration; clarify requirements for sanitarian aides, simplify the examination and application process; and adjust the sanitarian examination fee to cover the actual cost of the examination allowing the Department to remove a tax burden from taxpayers who had subsidized the cost of sanitarian examinations. The Department also amended the title "registered sanitarian" to "registered environmental health sanitarian" based on comments from some CHD's belief that the antiquated title "registered sanitarian" is not reflective of the professionals educated in the sciences of preventing human injury and illness and promoting well-being by identifying sources that provide potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions.

The Department anticipated that the new rules may cause the Department to incur a moderate cost for technical resources assigned to amend and promulgate new Registration of Sanitarians rules through the regular rulemaking process. The Department anticipated a significant benefit for more individuals being interested in the environmental health sanitarian profession and for more applicants being eligible and approved for registration as an environmental health sanitarian facilitated by the new rules. Additional benefits were expected for increasing the number of registered environmental health sanitarians by way of changes that allow an additional six months to take/retake the sanitarian examination and add sanitarian aide requirements that identify the specific skills and knowledge a sanitarian aide must have to ensure eligibility to take the sanitarian examination and obtain registration as an environmental health sanitarian. The Department expects that the benefits to the Department for having effective rules for registration of sanitarians is greater than the cost to amend the rules.

The Department anticipated that the CHDs would receive a significant benefit from having more registered sanitarians available for hire due to the new rules that simplify the application processes and reduce sanitarian examination and registration approval time-frames. The administrative completeness and substantive reviews for a sanitarian examination was reduced 80 days and for registration as a sanitarian reduced 55 days. The time-frame review for a registration by reciprocity was reduced 30 days and renewal registration was reduced 105 days. The Department expected CHD's may receive a moderate decrease in cost through newly registered sanitarians being available for employment sooner, allowing CHDs to reduce over-time paid to employed registered sanitarians working to ensure that all required inspections are completed. The Department anticipated that CHDs may incur greater benefits than any minimal costs that the CHDs might incur for having new requirement to document the supervision on an environmental health sanitarian aide, if any. The Department also anticipated that registered sanitarians would most likely not incur costs as a result of the new rules. The Department did anticipate that registered sanitarians may benefit by having a simplified renewal application process that reduced time spent completing and approving a renewal application. Other benefits include term "immediate family member's illness" that allows a registered sanitarian to request to defer continuing education based on a family member illness, and not just their own, and clarification of a requirement to allow an automatic extension for a registered sanitarian called to active military duty based on submitting a notice to the department.

Additionally, applicants applying for approval to take the sanitarian examination incurred a nominal increase cost for the sanitarian examination. The sanitarian examination fee increased from \$110 to \$140. The Department increased the cost of the sanitarian examination to match the Department's cost to purchase an examination from NEHA. In this rule, the Department also added applicants an option to take a sanitarian examination administered by another Department-approved testing center, and not just the Department. Because testing center charged applicants a \$125 application fee and \$325 for a sanitarian examination, the Department anticipated that most applicants will choose to pay the nominal \$30 increase to take a sanitarian examination administered by the Department rather than a \$450 fee charged by another testing center. Further, the Department anticipated that applicants seeking registration as a sanitarian may receive a decrease in costs due to the significant benefits provided by the new rules that simplify the application processes, reduce the approval time-frames for the sanitarian examination and registration, and amended requirement that increases the time allowed for an applicant to take and retake a sanitarian examination. The Department anticipated that the benefits provided by the new rules are greater than the one-time \$30 increase in cost to take a sanitarian examination administered by the Department.

The Department anticipated that individuals seeking information about becoming a registered sanitarian are likely to pursue employment as a sanitarian aide and complete five years of employment in a position related to environmental health. And for individuals who are employed as a sanitarian aide, the new rules clarify the environmental services skills, knowledge, experience, and applications an individual needs to acquire while employed as a sanitarian aide. The Department anticipated individuals seeking information or sanitarian aides

would receive a significant benefit for having rules that specify the requirements for preparing a sanitarian aide to pass a sanitarian examination.

Lastly, the Department anticipated that the general public would significantly benefit from county health departments employ more registered sanitarians that ensure inspections are timely and public nuisances are avoided and for the public, eliminated the threat to public health and safety. The Department expects that the new rules will significantly increase benefits for the public.

The Department, in the 2020 rulemaking, addressed a matter related to an Article 4 requirement for applicants to pass a sanitarian examination. The Department, since 2002, had contracted with the National Environmental Health Association (NEHA) to provide written sanitarian examinations to be administered by the Department. NEHA informed the Department that NEHA would be transitioning away from written sanitarian examinations to computer-based examinations. The Department administered its last written examinations in January 2020. At that time, the Department entered into an agreement with NEHA for Arizona applicants to take the NEHA examination through a third-party testing center. Due to this change, the Department amended the rules through a regular rulemaking to allow for NEHA computer-based sanitarian examination. The amended rules also add a definition for “testing center” and changes initial application administrative completeness review time-frame.

The Department anticipated incurring a moderate cost for technical resources to review and amend current rules; establish and maintain Article 4 rulemaking webpage; and expected to receive a moderate benefit for no longer administering the sanitarian examinations for approved applicants. In addition, the Department anticipated that CHDs may have received a benefit for employees seeking a registration as an environmental health sanitarian having more testing dates, times, and locations available rather than being limited to a Department schedule offering the sanitarian examination only four times a year. Similarly, the Department expected applicants would receive a moderate benefit for also having more testing dates, times, and locations available. Lastly, the Department did not expect the general public to incur any costs or receive benefits related to the rulemaking. The Department has determined that the benefits outweigh any potential costs associated with this rulemaking. Note: The Department chose to keep a passing examination score of 630; rather than using the NEHA ‘s passing examination score of 650.

The Department, in both rulemakings, also amended antiquated terms and citations, removed obsolete terms and requirements, and improve the clarity and effectiveness of the rules. The new rules to conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of the State.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No

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.

In the 2016 five-year-review report, the Department indicated the Article 4 rules effective and accomplish regulatory objectives. In addition, the Department specified that it did not plan to amend the rules and that if an issue occurs that prevents the Department from meeting its regulatory objectives, the Department will amend the rules. The Department, on September 1, 2016, received approval from the Governor to amend the Article 4 rules to address a statewide shortage of registered sanitarians limiting county health departments (CHDs) from conducting functions and duties, including enforcement actions, by delegation agreements between the Department and the CHDs. The Department, also on September 5, 2019, received approval from the Governor to amend the Article 4 rules to update requirements to allow for computer-based sanitarian examination provided by National Environmental Health Association (NEHA) be available for applicants, since NEHA's agreement with the Department to provide written examination ended December 2019. The Department determined it has completed the course of action as stated in the 2016 five-year-review report.

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 in 9 A.A.C. 16, Article 4, regulate the approval of applicants taking a sanitarian examination; establish requirements for environmental health sanitarian aides, environmental health registration as a sanitarian and renewals; and requests to defer continuing education and notices of renewal extension. The Department identifies regulated persons as applicants seeking registration, individuals employed as a sanitarian aide, and registered sanitarians. In this 2021 five-year-review report, the Department expects that applicants applying for registration as an environmental health sanitarian received benefits for having updated rules that simplify: (1) sanitarian examination and application process, (2) reduces approval time-frames, (3) adds third-party testing, and (4) removed requirement for an applicant who does not pass a sanitarian examination to submit another application and application fee before retaking the sanitarian examination.

Applicable to the sanitarian examination and application process, the Department added a fifth eligibility option in R9-16-402(A) to allow applicants to submit a copy of an official sanitarian examination test results with a score of 70% or more administered by a testing center. The Department also amended the sanitarian examination requirements in R9-16-405 to address NEHA's decision to stop providing written sanitarian examinations to be administered by the Department and added a requirement for applicants to take the sanitarian examination from a NEHA third-party testing center. The Department and NEHA also agreed that Department applicants will receive a reduced sanitarian examination fee of \$280 rather than current \$450 NEHA credentialing fee; a \$125 application fee and a \$325 sanitarian examination fee). Additionally, the Department did not change its sanitarian examination score requirement for applicants to pass having an examination score of 630 and greater rather than the NEHA passing examination score of 650. The Department anticipates that significant benefits are provided by the new rules - greater than a nominal increase in cost to take a sanitarian examination administered by a NEHA third-party testing center. The Department determines that the new rules imposes the least burden.

The Department expects that applicants seeking registration as a sanitarian receive a significant benefit provided by reducing the overall sanitarian examination time-frame by 140 days and the overall registration as a sanitarian time-frame by 55 days. In addition, the Department anticipates applicants, who are no longer limited to the Department's sanitarian examination scheduled of four times a year, receive a minimal benefit from third-party testing centers that make available a variety of testing dates, times, and locations for administering the sanitarian examination. Applicants may also receive a significant benefit for the new requirement that allow applicants to have six months to take a sanitarian examination after approval and is no longer required to submit another application and application fee before retaking the sanitarian examination within the six months. Additionally, applicants may receive a significant benefit for being provided prompt-preliminary results of a sanitarian examination from a third-party testing center rather than waiting weeks for a written result. For applicants seeking registration as an environmental health sanitarian, the Department determines that the benefits of having new rules outweigh nominal costs and imposes the least burden.

The Department anticipated that individuals wanting to becoming a registered sanitarian by way of five years of employment as a sanitarian aide in a position directly related to environmental health will receive a significant benefit for having new rule, R9-16-403, that clarifies the scope of environmental services skills, knowledge, and experience necessary to prepare for taking a sanitarian examination and ensure sanitarian aides they are on the right track. The new rule also includes requirements for an individual supervising a sanitarian aide to maintain and ensure an accurate record is available for assisting a sanitarian aide when preparing an application for the sanitarian examination and registration specified in R9-16-405. A sanitarian aide's record identifies the specific skills and knowledge the sanitarian aide has obtained and ensure eligibility to take the examination for an environmental health sanitarian. The Department determines that these new requirements provide a significant benefit to environmental health sanitarian aides – great than a possible burden. The Department does not believe a environmental health sanitarian aide will incur any costs or burden related to the new Article 4 rules.

Other benefits for registered environmental health sanitarian come from amended rules that removed a requirement for a registered environmental health sanitarian to report and explain if the registered environmental health sanitarian were a defendant and involved a malpractice case and clarified requirement for deferred continuing education to allow a registered environmental health sanitarian to defer continuing education based on an "immediate family member's illness," and not just their own. In new R9-16-404, the Department also added an automatic renewal extension for registered environmental health sanitarians called to active duty and allows the registered environmental health sanitarians to retains registration for the term of deployment plus 180 calendar days after. The Department expects registered environmental health sanitarian also receive a reduced burden for no longer having to provide documentation of continuing education and rather in the new rule signs an attestation affirming that course are applicable and consistent with Department approved continuing education courses. The Department also believes an additional benefit is received from amended requirement reducing the renewal registration overall time-frame by 105 calendar days. The

Department determines that registered environmental health sanitarians have not incurred any costs and as stated above, have received other benefits and reduced burden.

Lastly, the Department amended the title “registered sanitarian” to “registered environmental health sanitarian” based on public comments that the antiquated title “registered sanitarian” is not reflective of the professionals educated in the sciences of preventing human injury and illness and promoting well-being by identifying sources that provide potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions. The Department also updated the occupational title to include representation in the field of sanitary science and public health and enforce of the health and safety regulation, including identification of high-risk factors between people and spaces. The Department has determined that the new title provides a significant benefit at no cost or burden to regulated persons. The Department anticipated a significant benefit is provided to applicants seeking registration, individuals employed as a sanitarian aide, and registered sanitarians and increases the number of individuals being interested in the environmental health sanitarian profession and for more applicants being eligible and approved for registration as an environmental health sanitarian facilitated by the new rules. The Department determines that the probable benefits to regulated persons outweigh the probable cost incurred for having the rules and the rules impose the least burden and costs to regulated persons and the probable benefits to regulated persons outweigh the any probable costs.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No √

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)?

No, there are no federal laws that corresponding to the Article 4 rules. The rules are not more stringent than federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

All Article 4 rules were last amended by notice of final rulemaking at 23 A.A.R. 3038 and effective October 5, 2017. In addition, the rules in R9-16-401, R9-16-402, R9-16-405, and R9-16-407, were amended by notice of final rulemaking at 26 A.A.R. 1875, effective September 2, 2010. A.R.S. § 36-136.01 (B) requires a person “... not be employed as a sanitarian by the state or any political subdivision of the state unless that person is registered by the department [Department of Health Services] as a sanitarian...” and A.R.S. § 36-136.01 (D) requires a sanitarian registration be renewed annually by application that “contains information prescribed by the director by rule and...” Requirements in A.R.S. § 36-136.01 do not require the issuance of a regulatory

permit, license, or agency authorization as prescribed by A.R.S. § 41-1037. The Department believes that under A.R.S. § 41-1037(A)(3)¹ that a general permit is not applicable.

14. Proposed course of action

The Department in its review of the Article 4 rules has determined that the rules are effective, clear, and understandable. In this five-year-review report, the Department identifies no substantive issues or health and safety concerns with the rules and determines there is no need to amend Article 4. The Article 4 rules are enforced as written and provides necessary requirement to ensure registered environmental health sanitarians complies-with A.R.S. §§ 36-136.01. The Department does not plan to take action with regard to 9 A.A.C. 16, Art. 4.

¹ A.R.S. § 41-1037(A)(3) “The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.”

TITLE 9. HEALTH SERVICES

CHAPTER 16. OCCUPATIONAL LICENSING
ARTICLE 4. REGISTRATION OF SANITARIANS

SECRETARY OF STATE

2017 OCT -5 AM 11:22

FILED

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

2017

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 16. OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF SANITARIANS

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-136.01 authorizes the Arizona Department of Health Services (Department) to establish a sanitarians council and rules for the registration of sanitarians in the state of Arizona. As authorized by A.R.S. § 36-136.01, the Department adopted rules at Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 4. A.A.C. R9-16-401, R9-16-402, and R9-16-405 through R9-16-414 were originally promulgated in September 1976. The rules were substantially amended effective May 16, 2002 and last amended effective September 11, 2004, following the amendment of A.R.S. § 36-136.01 by Laws 2003, Ch. 21.

On September 1, 2016, the Department received an exception from the rulemaking moratorium, established by Executive Order 2016-03, to address the statewide shortage of registered sanitarians that prevents county health departments (CHD) from conducting the functions and duties, including enforcement actions to remediate public nuisances, required by Delegation Agreements between the Department and the CHDs. These functions, duties, and enforcement are statutorily required by A.R.S. §§ 36-132(A), 36-136(H), 36-601, 36-601.01, 36-901 through 36-916, and 36-3901 through 36-3915.

To address the statewide shortage of registered sanitarians, the Department is amending the rules in 9 A.A.C. 16, Article 4 to expand the eligibility criteria for individuals qualified to take the sanitarian examination; increase the number of qualified individuals approved; simplify the application process; and amend the sanitarian examination fee to cover the actual cost of the sanitarian examination to remove the burden from taxpayers who currently subsidize the cost of each sanitarian examination administered by the Department.

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

Persons directly affected by the rules:

- The Department
- County health departments

- Registered sanitarians
- Applicants seeking registration as a sanitarian
- Individuals seeking information about the sanitarian profession through employment as a sanitarian aide and individuals employed as a sanitarian aide
- General public

3. Cost and benefit analysis

This analysis covers costs and benefits, including revenue, associated with the 9 A.A.C. 16, Article 4 rulemaking. No new FTEs are required due to this rulemaking. Annual cost/benefit changes are designated as minimal when more than \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater. A cost or benefit is listed as significant when meaningful or important and not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
A. State Agencies and Political Subdivisions			
The Department	Requires technical resources to amend and promulgate new rules	Moderate-to-substantial	Significant
	Requires administrative support to update website, applications, forms, and other such administrative documents	Minimal	None
	Changes "Registered Sanitarian" title to "Registered Environmental Health Sanitarian"	None	Minimal
	Simplifies application processes and use of new form to request to defer continuing education	None	Minimal
	Removes requirement to submit another application and application fee for applicants who retake a sanitarian examination	None	Moderate
	Increases sanitarian examination fee	None	Minimal
	Removes obsolete requirements, updates antiquated language, and improves the effective of the rules	None	Significant
County health departments	Having more registered sanitarians available for hire	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
	<p>Revised term "natural science"</p> <p>Deletes requirement for another application and application fee for retaking a sanitarian examination</p> <p>Reduces approval time-frames</p> <p>Provides individuals, who supervise sanitarian aides with the requirements to prepare a sanitarian aide for the sanitarian examination and increases eligibility for a sanitarian aide's registration by way of five years of employment as a sanitarian aide</p> <p>Allows an individual eligible for registration as a sanitarian to take a sanitarian examination from a Department-approved testing organization</p> <p>Revises required administrative documents, applications, and other materials</p> <p>Changes "Registered Sanitarian" title to "Registered Environmental Health Sanitarian"</p>	<p>None</p> <p>None</p> <p>None</p> <p>Minimal</p> <p>None</p> <p>Minimal</p> <p>Minimal</p>	<p>Moderate</p> <p>Moderate</p> <p>Moderate</p> <p>None</p> <p>Moderate-to-substantial</p> <p>None</p> <p>None</p>
B. Consumers			
Registered sanitarians	<p>Simplifies the application process</p> <p>Deletes requirement for registered sanitarians to report a malpractice case</p> <p>Adds requirements for an applicant to provide types of contact information</p> <p>Adds form for requesting deferral of continuing education</p> <p>Reduces approval time-frames</p> <p>Adds the ability to defer continuing education due to an immediate family member's illness</p> <p>Adds automatic extension for registered</p>	<p>None</p> <p>None</p> <p>None</p> <p>None</p> <p>None</p> <p>None</p> <p>None</p>	<p>Minimal</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal</p>

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
	sanitarians called to active military duty		
Applicants seeking registration as a sanitarian	Changes "Registered Sanitarian" title to "Registered Environmental Health Sanitarian"	None	Minimal
	Changes term "natural science" to include physical science	None	Minimal
	Increases sanitarian examination fee	Minimal	None
	Simplifies the application process	None	Significant
	Reduces approval time-frames	None	Significant
	Adds an additional six month for an applicant to take a sanitarian examination for the first time, allowing an applicant more opportunities to retake and pass a sanitarian examination	None	Minimal
	Removes requirement for an applicant who does not pass a sanitarian examination to submit another application and application fee before retaking a sanitarian examination	None	Minimal
	Allows an applicant to submit an official notice from a testing organization approved by the Department that contain test results	None	Minimal
	Removes requirement for proof of experience by billet or an individual who personally supervised the applicant	None	Minimal
	Allows an applicant to take a sanitarian examination from a Department-approved testing organizations	None	Moderate-to-substantial
Individuals seeking information about sanitarian profession through employment as a sanitarian aide and	Provides an individual seeking information with requirements about the sanitarian profession through employment as a sanitarian aide;	None	Minimal
	Provides an individual employed as a sanitarian aide with requirements for environmental service skills, knowledge, and applications that the individual	None	Minimal

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
individuals employed as a sanitarian aide	needs to acquire while employed as a sanitarian aide Provides a sanitarian aide with adequate documentation to demonstrate the sanitarian aide's eligibility for approval to take the sanitarian examination and the five-years of employment in a position directly related to environmental health	None	Minimal
General public	Increases the number of registered sanitarians in Arizona Decreases tax burden for taxpayers by increasing the sanitarian examination fee to cover the cost of the sanitarian examination Increases tax revenue paid by newly employed registered sanitarians	None None None	Significant Minimal Moderate

- **The Department**

Under the rules in 9 A.A.C. 16, Article 4, the Department and the Sanitarians Council approve applicants for sanitarian examination; administer the sanitarian examination; approve applicants for registration as a sanitarian, including applicants by way of reciprocity; approve registered sanitarians' requests to defer continuing education; and approve registered sanitarians' registration renewals. In 2016, the Department received 65 sanitarian registration applications; approved 69 applicants to take a sanitarian examination; approved 48 applicants for registration as a sanitarian, including applicants by reciprocity; and approved 509 registered sanitarians for annual renewal¹. The Department anticipates that the Department will incur a moderate-to-substantial cost for technical resources assigned to amend and promulgate the new Registration of Sanitarians rules through the regular rulemaking process. The Department also anticipates that the Department may incur a minimal cost for administrative support to: update Department webpages, update the registration and renewal applications, develop a Department-provided request form to defer continuing education, and update other materials as needed. The Department changed the "registered sanitarian" classification title at the request of counties and stakeholders who believe that a more relevant title could attract

¹ Data provided by Department of Health Services, Environmental Health and Sanitarians Council

individuals to the profession. If relevant, and individuals are attracted to the new "environmental health sanitarian" title, the Department anticipates that the increase in the number of applicants approved for registration as a sanitarian would be small, and at best, provide a minimal benefit to the Department. Additionally, the Department anticipates a moderate decrease in costs for implementing the new, simplified registration and renewal application processes and the new Department-provided request form to defer continuing education. The Department expects that administrative support will require less time processing applications and forms. The Department also expects a moderate decrease in costs from removing a current rule that requires applicants who retake a sanitarian examination to submit another application and application fee for each sanitarian examination taken. For the Department, the cost to process an application and the time to reapprove an applicant to retake a sanitarian examination is considerably greater than the \$25 application fee collected. The Department expects that the increased sanitarian examination fee will have no effect on the Department, since the cost of the sanitarian examination is paid for by an applicant and subsidized from the state's General Fund. The Department expects that the new rule requiring an applicant to pay the total cost of a sanitarian examination will provide a minimal benefit for a very small decrease in cost for the General Fund compared to the General Fund's 2017-projected revenue of \$10.1 billion.

Lastly, this rulemaking removes obsolete requirements, updates antiquated language, and improves the effectiveness of the rules, as identified in this economic, small business, and consumer impact statement and the new rules. The Department expects that the benefit to the Department for having rules that are effective, consistent, and understandable to be greater than the cost. The Department anticipates that the total cost to the Department for technical and administrative support will most likely become less costly over time. The Department also anticipates that the benefit of more individuals having information about the environmental health sanitarian profession, more applicants being eligible and approved for registration as an environmental health sanitarian, and more registered environmental health sanitarians being retained will be a significant benefit that outweighs the moderate-to-substantial cost of this rulemaking.

- **County health departments (CHDs)**

Arizona CHDs in 2016 conducted over 108,000 inspections at over 49,300 regulated facilities for food establishments, bathing places, trailer coach parks, public school grounds, camp grounds, children's camps, public accommodations, and bottled water facilities. Of all those inspections, over

99,000 were food safety related inspections². The CHDs employ 30% of all Arizona registered sanitarians and are consistently challenged by the average registered sanitarians' annual turnover rates of 25% and some with turnover rates as high as 45.5%³.

The Department anticipates that the CHDs will most likely receive a significant benefit from having more registered sanitarians available sooner for hire thanks to the new rules that expand eligibility criteria for individuals to be qualified to take the sanitarians examination and simplify the application processes. In the new rule section R9-16-401, the revised term "natural science" expands eligibility criteria by adding "physical science." Adding physical science as a category included in natural science allows the Department to consider more natural science courses when determining an applicant's eligibility, when eligibility is based on applicant having at least 30-semester credit in natural science. The Department simplified the application process by moving the approval to retake a sanitarian examination from the sanitarian examination process to the registration as a sanitarian process. This change allows the Department to remove a current rule requiring applicants who retake a sanitarian examination to submit another application and application fee prior to retaking a sanitarian examination. By moving the approval to retake a sanitarian examination, the Department is able to reduce approval time-frames for both the sanitarian examination and registration as a sanitarian approvals. The Department expects CHDs will receive a moderate benefit from each of these rule changes. The Department anticipates that more-newly registered sanitarians being available for employment sooner will allow CHDs to reduced over-time hours paid to registered sanitarians currently working to ensure completion of all required inspections.

The Department also anticipates that CHDs may see a minimal increase in cost because the new rules specify for an individual, who supervises an environmental health sanitarian aide, the types of skills and experience the environmental health sanitarian aide needs to obtain and the types of records needed to document the environmental health sanitarian aide's duties and assignments completed. An individual complying with these new rules will be able to demonstrate the supervised environmental health sanitarian aide's eligibility to take a sanitarian examination and eligibility for registration as a registered environmental health sanitarian. However, the minimal increase in cost will vary based on the CHD. The Department expects that for a CHD having an existing policy that provides adequate guidance to an individual, who supervises a sanitarian aide, no increase in cost would occur. Through

² Data provided by ADHS Environmental Health, Food Safety and Environmental Services Annual Report for FY2016: <http://azdhs.gov/documents/preparedness/epidemiology-disease-control/food-safety-environmental-services/annual-reports/fy2016-activity-summary.pdf>

³ Data provided to the Department by Mohave County, Pinal County, and Maricopa County

these new rules, the Department anticipates an increase in the number of sanitarian aides approved to take a sanitarian examination and approved for registration.

Additionally, the Department anticipates that a CHD, who hires an individual and allows the individual an opportunity to pass a sanitarian examination during the individual's 12-month probation period, may receive a moderate-to-substantial decrease in cost under the new rule that allows an applicant to take a sanitarian examination at any time. CHDs have informed the Department that a number of individuals on probation have quit or have been fired after passing a sanitarian examination during their 12-month probation period. The new rule allows applicants to take a sanitarian examination as often as desired during their 12-month probation period from a Department-approved testing organization, not just during one of the four scheduled sanitarian examinations administered annually by the Department as required by current rules. The Department anticipates that a CHD will decrease costs by not having to solicit to hire and train another individual to replace the individual who did not pass a Department administered sanitarian examination, but who may have passed a sanitarian examination given by other Department-approved testing organizations.

The Department anticipates that CHDs may incur minimal costs to update administrative documents related to the amended environmental health sanitarian classification title if the CHDs choose to change them and minimal costs for a CHD to amend the recordkeeping process to ensure individuals who supervise a sanitarian aide maintain appropriate records used to demonstrate a sanitarian aide's eligibility for approval to take a sanitarian examination and eventually, be registered as a sanitarian. Overall, the Department anticipates that the CHDs should experience more benefits from the new rules than any possible costs that the CHDs may incur, if any.

- **Registered sanitarians**

The Department approved 557 applicants for registration as a sanitarian and renewal as a registered sanitarian in 2016. The Department anticipates that registered sanitarians will most likely not incur any costs and will receive minimal benefits because of the new rules. The new rules simplify the application process by removing a requirement for registered sanitarians to report a malpractice case resulting from an applicant's employment as a registered sanitarian. The new rules further simplify the application process by adding a requirement that an applicant provide types of contact information that will allow the Department to communicate with an applicant in a timelier manner. Additionally, adding new rules for a Department-provided deferred continuing education form and a requirement for an applicant to submit the form by November 1 of each calendar year will most likely provide a minimal benefit to applicants wishing to defer continuing education. In the current rule, the request to

defer continuing education is included with the renewal application packet; the renewal application packet is required to be submitted on or before December 31 of each calendar year. If the Department denies a request to defer continuing education, it is too late for an applicant to complete the continuing education denied in time to renew the applicant's sanitarian registration. However, the new rules allow applicants to submit a request to defer continuing education form earlier, and if the Department denies an applicant's request to defer continuing education, the applicant will have time to complete required continuing education and submit their renewal application packet on time.

Further, these changes also allow the Department to reduce approval time-frames for both renewal applications and requests to defer continuing education, saving the applicant's time. Another new rule adds the term "immediate family member's illness" to increase the number of criteria that a registered sanitarian may seek approval for deferral of continuing education, allowing the registered sanitarian a greater opportunity to retain their registration as a sanitarian. Similarly, for a registered environmental health sanitarian called to active military duty, a new rule adds an automatic retention of their registration and defers continuing education and registration renewal for the term of service plus 180 calendar days. Current rule requires a registered sanitarian called to active military duty to submit a renewal application and request to defer continuing education while serving military duty. For a registered sanitarian called to active duty, this automatic extension reduces time spent completing a renewal application and a request to defer continuing education, and likewise, allows the registered sanitarian an opportunity to retain their registration as a sanitarian. The Department expects that the new rules will most likely provide minimal increased benefits for most, if not all, registered sanitarians.

- **Applicants seeking registration as a sanitarian**

Last year, the Department approved 65 newly registered sanitarians and approved 69 applicants to take a sanitarian examination. The Department anticipates that changing the "registered sanitarian" classification title to a more relevant title could attract individuals to the profession. The Department expects that the new classification title "environmental health sanitarian" will provide some intrinsic value equal to having a minimal benefit for applicants seeking registration as a sanitarian. The Department anticipates a minimal decrease in cost for some applicants due to changing the term "natural science" to include physical science. The Department expects the new term will allow some applicants to use natural science semester credits that would be denied under current rules. This change will prevent some applicants from having to take additional natural science courses to satisfy the required 30 natural science semester credits required for approval of an applicant to be eligible to take a sanitarian examination and be registered as a sanitarian.

In the current rules, an applicant is approved to take a sanitarian examination administered by the Department and is required to pay a \$110 sanitarian examination fee. In the new rules, an applicant may choose whether to take a sanitarian examination that the Department administers four times a year or that a testing organization approved by the Department administers any time during a year. The new rules also require an applicant, who chooses to take a sanitation examination administered by the Department, to pay a \$140 sanitarian examination fee. The Department anticipates an applicant who pays the \$140 sanitarian examination fee will incur a minimal increase in cost over the current \$110 fee. The Department expects an applicant to incur a minimal increase in cost based on the Department's comparison of its current sanitarian examination fee with the new sanitarian examination fee and a sanitarian examination fee required by a testing organization approved by the Department. The Department determined that a sanitarian examination administered by the National Environmental Health Association (NEHA) is substantially equivalent and meets this state's sanitarian examination requirements; as such, NEHA meets the requirements to be a Department-approved testing organization. NEHA charges an applicant a \$125 application fee and \$325 for a sanitarian examination. If an applicant takes a NEHA sanitarian examination administered by a NEHA qualified testing center, the applicant will also pay an additional \$100 to a qualified testing center⁴. The Department anticipates that an applicant who pays \$450 to \$550 to take a sanitarian examination administered by NEHA or a NEHA qualified testing center will incur a greater cost than paying the \$140 fee for a sanitarian examination administered by the Department as required in the new rules. The Department expects most, if not all, applicants will choose to take a sanitarian examination administered by the Department.

The Department also anticipates that an applicant may receive a decrease in costs due to the significant benefits provided by the new rules. The new rules add a requirement for an official transcript issued by a college or university from outside of the United States or its territories to include a report that a third party education evaluation service has assessed the transcript and determined foreign education equivalency to a degree or educational courses in the United States. The new rules also add to the list of required documents a copy of the applicant's Social Security card and proof of U.S. citizenship. These documents are required by Arizona Revised Statutes §§ 25-320, 25-502, and 41-1080. Additionally, the new rules add a requirement for the Department to provide notification for rescheduling a sanitarian examination. The new rules simplify the sanitarian examination and registration application processes and reduce the sanitarian examination and sanitarian registration approval time-frames. The Department expects that these rules will decrease

⁴ National Environmental Health Association: <http://neha.org/professional-development/credentials/rehs-rs>

the effort and time an applicant spends on completing an application, not having to respond to a notice of deficiency, and not having to wait longer for approval than is necessary, and rather, an applicant may receive a minimal benefit by spending less time being unemployed.

The Department also anticipates a minimal decrease in cost and an increase in benefit by adding an additional six months for an applicant to take a sanitarian examination for the first time. The additional six months extends the overall time an applicant has to pass a sanitarian examination and allows an applicant more opportunities to retake a sanitarian examination. The new rules also remove a current rule requirement that an applicant who does not pass a sanitarian examination submit another application and application fee (\$25) before retaking a sanitarian examination again. The Department anticipates a minimal decrease in cost for an applicant, since an applicant will no longer be required to spend time and money to complete and resubmit another application that was completed and submitted to the Department just weeks before.

The Department expects that the current rules exclude some applicants by not allowing an applicant to submit documentation that demonstrates that the applicant completed and passed a sanitarian examination that is equivalent to this state's examination requirements. The Department, in the new rule, allows an applicant to submit with an application for registration an official notice from a testing organization approved by the Department that contains test results, rather than requiring the applicant to take a sanitarian examination pursuant to current rules. The Department expects that these applicants may receive a minimal decrease in cost and an increased benefit from this change by not having to retake a sanitarian examination.

The Department anticipates removing rules that require other applicants, who acquired environmental health services experience while in the military, to provide a billet (an official order directing a person to a position/duties) as proof of experience may receive a minimal decrease in cost. As well as, an applicant who acquired environmental health services experience while employed may provide a letter documenting proof of employment from the individual who personally supervised the applicant. It is the Department's experience that these applicants may wait an unreasonably long period of time for a billet or for a letter signed by an individual who personally supervised an applicant; only never to receive the billet or the letter. The new rules allow those applicants approval by using other types of documentation to verify employment, rather than deny approval because the billet never arrived or the individual who personally supervised the applicant is deceased.

Lastly, as mentioned under CHDs, the Department anticipates that a CHD employee asked to pass a sanitarian examination during the employee's 12-month probation period may also receive a moderate-to-substantial benefit from the new rule that allows applicants to take a sanitarian

examination at any time from a Department-approved testing organization. The new rule allows applicants to take a sanitarian examination as often as desired, not just during one of the four scheduled sanitarian examinations administered annually by the Department as required by current rules. The Department anticipates that an applicant, who is also a CHD employee on probation, will decrease costs by not having to go through another employment process, employer training, and probation by passing a sanitarian examination when needed whether from the Department or a Department-approved testing organization. The Department anticipates that the benefits provided by the new rules to be significantly greater than the \$30 increase in cost to take a sanitarian examination administered by the Department.

- **Individuals seeking information about the sanitarian profession through employment as a sanitarian aide and individuals employed as a sanitarian aide**

There are currently 20.5 sanitarian aides employed by the CHDs and the Department⁵. The Department expects that individuals seeking information about the sanitarian profession or who are employed as a sanitarian aide, under current rules, do not receive any benefit and mostly likely, unknowingly incur probable costs for a lack of knowing what the state's requirements and responsibilities are for the practice of a registered sanitarian or a sanitarian aide. The new rules provide individuals seeking employment and individuals employed as a sanitarian aide with information regarding the skills, knowledge, and experience required to pass a sanitarian examination and be approved for registration as a sanitarian. The Department anticipates that the new rules will provide individuals seeking information about a sanitarian profession through employment as a sanitarian aide with this information and make them more likely to pursue employment as a sanitarian aide, more likely to complete five years of employment in a position directly related to environmental health, and more likely to become a registered sanitarian. For individuals who are employed as a sanitarian aide, the new rules provide needed requirements that identify the environmental services skills, knowledge, experience, and applications that an individual should acquire while employed as a sanitarian aide. The new rules also provide that a supervisor of a sanitation aide establish a record for a sanitarian aide that demonstrates the sanitarian aide's experience and work history. The record provides information needed for a supervisor to compose a letter of employment to the Department identifying the dates worked and types of activities performed by a sanitarian aide. The record provides confirmation to the sanitarian aide of their eligibility for approval to take a sanitarian examination by establishing the sanitarian aide's five years of employment in a position directly

⁵ Data provided by ADHS Environmental Health, Food Safety and Environmental Services Annual Report for FY2016: <http://azdhs.gov/documents/preparedness/epidemiology-disease-control/food-safety-environmental-services/annual-reports/fy2016-activity-summary.pdf>

related to environmental health. The Department anticipates that the increase in a sanitarian aide's proficiencies related to environmental health services may result in an increased benefit in the number of sanitarian aides passing a sanitarian examination. The Department does not anticipate that the new rules for sanitarian aides will increase costs and expect a decrease in costs for individuals seeking information or who are employed as a sanitarian aide. The Department anticipates that a probable decrease in costs will occur by eliminating the costs of time and resources used to search for information that is not available in current rules. The Department expects that the new rules will most likely provide a minimal increase in benefits for individuals seeking information about the sanitarian profession through employment as a sanitarian aide and individuals employed as a sanitarian aide.

- **General public**

The Department reported last year that registered sanitarians and sanitarian aides conducted over 742,000⁶ inspections at over 49,000 regulated facilities on the general public's behalf. The Department anticipates that the accomplishments of registered sanitarians employed by CHDs and the Department have a significant benefit for the public. Under the new rules, the Department expects that a significant benefit for the public may increase as the number of employed registered sanitarians increase, the number of inspections increase, and the number of public nuisances decrease. The Department anticipates that public nuisances increase costs, and the more inspections performed, the more public nuisances would be avoided, resulting in a decrease in cost for the public. The Department also anticipates an indirect benefit could occur from the new rules by providing requirements and responsibilities for sanitarian aides who perform sanitarian inspections and prepare inspection reports approved and signed by a registered sanitarian.

Additionally, the Department anticipates a minimal increase in benefit for taxpayers who, under current rules, subsidize the cost of a sanitarian examination fee. The current rules require applicants pay \$110 to take a sanitarian examination administered by the Department. Since the cost for the Department to buy a sanitarian examination is \$140, taxpayers pay the \$30 difference through monies appropriated from the General Fund for each applicant taking a sanitarian examination. In the new rules, the sanitarian examination fee raised to \$140. Based on the \$30 increase in a sanitarian examination fee, the Department anticipates that the public (taxpayers) will most likely experience a decrease in cost. Lastly, as more registered sanitarians are employed, the Department anticipates that the newly employed will pay taxes on income earned that could result in a moderate benefit to the

⁶ Data provided by ADHS Environmental Health, Food Safety and Environmental Services Annual Report for FY2016: <http://azdhs.gov/documents/preparedness/epidemiology-disease-control/food-safety-environmental-services/annual-reports/fy2016-activity-summary.pdf>

general public. The Department expects the new rules may increase benefits and decrease costs for the public.

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

Although the new rules add "testing organization approved by the Department" to administer a sanitarian examination, the Department does not anticipate an impact to private businesses with regards to direct or secondary employment. The Department expects the difference in cost of a sanitarian examination administered by the Department (\$140) and a sanitarian examination administered by a Department-approved testing organization (\$500 - \$600) will most likely cause most applicants, if not all applicants, to take a sanitarian examination administered by the Department. For this reason, the Department anticipates that the new rules will most likely have no effect on direct or secondary employment for private businesses. The intent of the new rules is to increase the number of registered sanitarians in the state as discussed in paragraph 3. The Department expects that the number of registered sanitarians will increase; however, the Department has no method to determine how many of the newly registered sanitarians will obtain employment in the state and the impact it may have.

5. A statement of the probable impact of the rules on small businesses

a. Identification of the small businesses subject to the rules

The Department considered whether regulated facilities would be impacted by the new rules and expects because regulated facilities are required to comply with Title 9, Chapter 8, Food Recreation and Institutional Sanitation, they are not affected by the new rules. The new rules are specific to increasing the number of registered sanitarians in the state; the new rules do not add requirements for a regulated facility. The Department anticipates that a rulemaking for Title 9, Chapter 8 rules would most likely affect regulated facilities. The Department knows of no other small businesses that may be affected by the new rules.

b. The administrative and other costs required for compliance with the rules

Since the Department knows of no small businesses that may be affected by the new rules, there are no other administrative or outside expenses expected.

c. A description of the methods that the agency may use to reduce the impact on small businesses

Since the Department knows of no small businesses that may be affected by the new rules, there are no methods that the Department may use to reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs and benefits to private persons and consumers (general public) from the new rules are described in paragraph 3.

6. A statement of the probable effect on state revenues

The intent of the new rules is to increase the number of registered sanitarians in the state, and the Department anticipates the number of registered sanitarians will increase as identified in paragraph 3. The Department also anticipates newly employed registered sanitarians will pay taxes on income earned and could result in an increase in state revenues. However, the Department has no method to determine how many of the newly registered sanitarians will obtain employment in the state and what the probable effect on state revenues might be.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable.

TITLE 9. HEALTH SERVICES

CHAPTER 16. OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

July 2020

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 16. OCCUPATIONAL LICENSING

ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-136.01 authorizes the Arizona Department of Health Services (Department) to establish a sanitarians council and rules for the registration of sanitarians in the state of Arizona. Pursuant to A.R.S. § 36-136.01(B), “The council shall provide for the classification of sanitarians, establish standards for persons employed as sanitarians and provide for the examination of applicants for registration as sanitarians.” Pursuant to A.R.S. § 36-136.01(F), “The council shall charge and collect a nonrefundable examination fee established by the director by rules that does not exceed the cost of administering the examination.” The rules were originally promulgated in September 1976, were substantially amended effective May 16, 2002 and last amended effective October 05, 2017. The Department has for many years contracted with the National Environmental Health Association (“NEHA”) to provide written-paper examinations for the registration of environmental health sanitarians prescribed in 9 A.A.C. 16 Article 4, Registration of Environmental Health Sanitarians. NEHA was incorporated in 1937 as a national professional society for environmental health practitioners used to establish a standard of excellence for its developing profession. Their standard, known as the Registered Environmental Health Specialist/Registered Sanitarian credential, is recognized by the states and many states¹ use and accept the NEHA sanitarian examination for registration. The Department began administering NEHA written-paper examinations in 2002 and continued to administer until January 2020. In 2018, NEHA informed the Department that NEHA would be transitioning away from written-paper examinations to computer-based examinations administered by third party testing centers (testing center). At this time, NEHA examinations are administered by testing centers. The eligibility criteria to sit for the examination, the determination of a passing score, the number of continuing education requirements, and other requirements remain the responsibility of the Department. The Department provides for sanitarian examination pursuant to A.R.S. § 36-136.01(B) by agreement with NEHA for Arizona approved applicants to obtain a sanitarian examination with a testing center. In this rulemaking, requirements for sanitarian examination are updated and requirements related to the Department’s administration of the sanitarian examination and cost of examination removed. The Department will maintain the current passing examination score of 630 rather than using the NEHA passing examination score of 650. The Department

¹ States using the [NEHA](#) examination for registering sanitarians includes: Arizona, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Minnesota, Montana, Nevada, North Carolina, Ohio, Oregon, Washington, West Virginia, and Wisconsin. NEHA affiliates include 42 U.S. states: [NEHA Affiliates by State, Country or International](#).

received an exception from the rulemaking moratorium established by Executive Order 2019-01 and has updated the current rules to remove obsolete requirements, update examination requirements, and revise outdated language to improve the clarity and effectiveness of the rules.

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

Persons directly affected by the rules:

- The Department
- County health departments
- Applicants seeking registration as an environmental health sanitarian
- General public

3. Cost and benefit analysis

This analysis covers costs and benefits associated with the 9 A.A.C. 16, Article 4 rulemaking. No new FTEs are required due to this rulemaking. Annual cost/benefit changes are designated as minimal when more than \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater. A cost or benefit is listed as significant when meaningful or important and not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
A. State Agencies and Political Subdivisions			
The Department	Requires technical resources to amend the rules: Removes requirement for the Department to administer the sanitarian examination Clarifies use of testing center requirement and adds testing center definition Increases time-frame duration for initial registration	Moderate None None None	Significant Moderate Significant Significant
County health departments	Allows an individual eligible for registration as a sanitarian to take a sanitarian examination from a testing center	None	Significant
B. Consumers			
Applicants	Updates sanitarian examination	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
seeking registration as an environmental health sanitarian	requirements Allows an individual eligible for registration as a sanitarian to take a sanitarian examination from a testing center	None	Minimal
General public	Requirement for approved applicants to use a testing center	None	Significant

- **The Department**

Under the current rules in 9 A.A.C. 16, Article 4, the Department and the Sanitarians Council approves applicants for sanitarian examination; administers the sanitarian examination; approves applicants for registration as a sanitarian, including applicants by way of reciprocity; approves registered environmental health sanitarians' requests to defer continuing education; and approves registered environmental health sanitarians' registration renewals. The Department, pursuant to A.R.S. § 36-136.01(F), also collects² a nonrefundable initial application fee of \$25 and an annual renewal application fee of \$10. In this rulemaking, the Department amends requirements in R9-16-401, R9-16-402, R9-16-405, R9-16-407, and Table 4.1. The changes include removing a requirement for the Department to administer sanitarian examinations, adding a “testing center” definition, clarifying a requirement for approved applicants to use a testing center, and increasing the administrative completeness review time-frame for an initial registration. The Department anticipates incurring a moderate cost for technical resources, rules analyst and program staff, to review and amend current rules; establish and maintain Article 4 rulemaking webpage; and organize and meet with stakeholders to ensure the Department is aware of their concerns and amend the draft rules when appropriate. The Department anticipates that the total cost to the Department for technical resources will most likely become less costly over time. The Department expects that the changes made through this rulemaking will provide a significant benefit to the Department for having rules that are more effective and understandable. Additionally, by clarifying requirements for sanitarian examinations administered by testing centers, the Department expects to receive a moderate benefit for program staff, who has been administering the sanitarian examinations, to assume other program tasks-responsibilities. However, the Department does not expect the benefit to cover the Department’s costs for applicants who wish to obtain a sanitarian registration or renewal registrations. In 2019, the Department completed 77 initial applications and renewed 528 sanitarian registrations. The Department estimates that the cost to complete an initial application is \$95 and to complete

² The 9 A.A.C. 16, Article 4 Notice of Final Rulemaking at [8 A.A.R. 2444](#) provides verification that the fees stated above remain since rules promulgated in 2002.

a renewal application \$42. The Department estimates³ that initial applications cost \$5,390 and the cost for the 528 renewal registrations is \$16,896. In 2019, the Department estimates that the cost for both initial and renewal applications is \$29,491 and the amount of fees collected is \$7,205. The Department's cost to register sanitarians exceeds the amount of fees collected.

In addition, A.R.S. § 36-136.01(B) requires "The council to...provide for the examination of applicants for registration as sanitarians." And A.R.S. § 36-136.01(F) requires "The council to charge and collect a nonrefundable examination fee...that does not exceed the cost of the examination." The Department believes that the amended requirement allowing approved applicants to select a testing center for administration of a sanitarian examination maintains the Department consistency with the statutes, specifically ensuring that: (1) "provide for the examination of applicants" and (2) "a nonrefundable examination fee...does not exceed the cost of the examination." In the Department's latest agreement with NEHA, the 2020 cost for the sanitarian examination is \$280 with understanding that over the next five years (through the end of 2024), the price of the sanitarian examination is not to exceed \$310. The sanitarian examination cost of \$280 covers examination content (\$50), examination delivery (\$150 - testing center), and NEHA staff time (\$80).

The Department also expects that clarifying the use of testing centers will have a significant benefit for having rules that are effective and understandable; similarly, increasing the administrative completeness review time-frame duration for an initial registration is expected to provide a significant benefit for allowing staff to have adequate time. In the 2017 Registration of Sanitarians rulemaking at 23 A.A.R 3038, the Department amended 4 of 5 approval time-frames listed in Table 4.1; the overall time-frames for four approvals were decreased between 30 to as much as 140 calendar days. The time-frame for an initial application administrative completeness review changed from 30 to 5 calendar days. Since the 2017 Registration of Sanitarians rulemaking, effective October 5, 2017, the Department has determined that program staff requires additional time for completing an initial application administrative completeness review. The Department believes changing the time-frame from 5 to 10 calendar days is reasonable. The Department verifies that other occupational licensing Articles in 9 A.A.C. 16 require 15 and 30 calendar days for completing an administrative completeness review. The Department expects that the benefit to the Department for having rules that are effective, consistent, and understandable to be significantly greater than the cost.

- **County health departments (CHDs)**

In 2019, Arizona CHDs conducted over 100,000 routine inspections at over 55,000 regulated facilities for food establishments, bathing places, trailer coach parks, public school grounds, camp grounds, children's camps,

³ 2019 fees collected for initial applications is $(\$25)(77) = \$1,925$; fees collected for renewal is $(\$10)(528) = \$5,280$. The Department collected \$7,205. The Department cost for initial applications is $(\$95)(77) = \$7,315$; cost for renewal is $(\$42)(528) = \$22,176$. The Department cost is \$29,491. The fees collected (\$7,205) do not cover the Department's costs (\$29,491); the Department has a shortage of \$22,286. The Department's cost of \$95 and \$42 were taken from the 2017 Registration of Sanitarians rulemaking. The Department expects the costs of \$95 and \$42 has most likely increased since 2017.

public accommodations, and bottled water facilities. The 2019 routine inspections conducted were completed by 198 Arizona registered environmental health sanitarians employed by the CHDs. The Department does not expect CHDs to incur additional costs related to the Article 4 rulemaking. Rather, the Department anticipates that CHDs will most likely receive a significant benefit for requirements that allow approved applicants to take a sanitarian examination at a testing center and that define and clarify the use of a “testing center.” In addition to having requirements that are clearer and less burdensome, additional benefit may come from allowing approved applicants, such as a county employee on probation, to choose a testing center that accommodates testing dates, times, and locations that allows the employee to obtain sanitarian registration prior to the end of the employee’s one-year probation period – securing the employee’s employment with the county. And rather than being limited to four attempts, an approved applicant may attempt taking the sanitarian examination an unlimited number of times within the timeframes designated by the Sanitarian Council. The Department anticipates that some CHDs may incur an increased sanitarian examination fee if a CHD, as part of employment, agrees to incur the cost of a sanitarian examination on behalf of an employee on probation. Initially, the Department considered that CHDs who incur the cost of a sanitarian examination on behalf of an employee might incur-receive a similar cost-benefit as applicants who are seeking registration as an environmental health sanitarian and pay for a sanitarian examination out-of-pocket. However, the Department does not consider the increased sanitarian examination fee paid by a CHD to be a direct-cost imposed by the rulemaking, since a CHD is not required by rule to pay a sanitarian examination fee for an approved applicant (employee). Lastly, the Department expects that CHDs may receive a significant benefit for the Department keeping the sanitarian examination passing test score at 630, rather than accepting a NEHA passing test score of 650.

- **Applicants seeking registration as a sanitarian**

During 2019, the Department administered 77 sanitarian examinations. The current rules require, the Department to administer the sanitarian examination four times each calendar year and to collect monies for an application and sanitarian examination from applicants wishing to be a registered environmental health sanitarian. The Department amended requirements in R9-16-405, Application for Sanitarian Examination and Registration, to simplify sanitarian examination requirements and clarify requirement for an applicant to select a testing center to administer the sanitarian examination. The Department expects approved applicants may receive a minimal benefit for not having to schedule a sanitarian examination during one of the four times when the Department administers sanitarian examinations. In addition, the Department anticipates that applicants may receive a minimal benefit for having the options to choose the time, date, and location of a testing center providing a sanitarian examination. The amended rule does not prevent applicants from taking a sanitarian examination directly through NEHA. An applicant who chooses to take a sanitarian examination through NEHA, as a non-member, will pay an application fee of \$130, a sanitarian examination fee of \$335, and a testing center (Pearson VUE) fee of \$110. In total, an applicant will pay NEHA – \$575. The Department

expects when given a choice, approved applicants are more likely to receive a significant benefit for choosing to pay the council a \$25 application fee and \$280 for a sanitarian examination arranged by the Department for all Arizona approved applicants wishing to take a sanitarian examination. Also, recall, from Subsection 1, an approved applicant taking a sanitarian examination from NEHA must have a passing test score of 650. The Department expects approved applicants will most likely receive a significant benefit for the Department's decision to keep a sanitarian examination passing test score of 630, rather than the NEHA passing testing score of 650. The Department does not anticipate that the amended rules will cause a decline in the number of applicants seeking registration as a sanitarian.

- **General public**

The Department anticipates that the amended rules that simplify the sanitarian examination requirements will not increase costs or decrease benefits for the general public. However, the Department does expect the requirement for approved applicants to use a testing center may provide a significant benefit to taxpayers, who under current rule, would have to incur a portion of approved applicants' sanitarian examination fees, since a sanitarian examination fee collected after January 2020 is less than the current cost of a NEHA sanitarian examination. The amended rule in R9-16-405 through the use of testing centers removes the probability that an approved applicant will pay less for a sanitarian examination than its cost. As stated previously in Subsection 3, the amended rule ensures that the cost of a sanitarian examination "...does not exceed the cost of the examination."

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

The amended rules require applicants seeking registration as a sanitarian, and who have not passed a sanitarian examination, to take a sanitarian examination administered by a testing center approved by the Department. The Department expects that some small businesses that are testing centers approved by the Department may see an increase in the number of examinations administered. The annual numbers of sanitarian examinations administered by the Department for the past three years are: 77 in 2019, 59 in 2018, and 74 in 2017. The total number of sanitarian examinations administered (210) divided by the number of years (three) results in a yearly average of 70 administered sanitarian examination. The Department uses the yearly average of administered sanitarian examinations (70) and the number of Pearson Vue (third party) testing centers in Arizona (three) to estimate the average impact on some small business. The estimated average impact to each of the three testing centers, considering all things equal, is moderate if each testing center administers 23.3 sanitarian examinations yearly. The Department anticipates that the 23.3 additional examinations administered by each testing center may not be substantial enough to merit hiring an additional employee. The Department expects testing centers administering computerized examinations will most likely include sanitarian examinations in already established testing times rather than increase the number of testing times to accommodate a small number of sanitarian examinations. The Department anticipates that the rulemaking will

most likely not have a substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state.

5. A statement of the probable impact of the rules on small businesses

a. Identification of the small businesses subject to the rules

The amended rules are specific to sanitarian examinations and testing centers. The Department considered small businesses that maybe impacted by the amended rules and identified licensed food establishments, pursuant to 9 A.A.C. 8, Article 1, since registered environmental health sanitarians inspect this type of small business. However, since licensed food establishments comply with requirements in 9 A.A.C. 8, Food Recreation and Institutional Sanitation, Article 1, Food and Drink, the Department does not expect food establishments to be subject to this rulemaking. In the same way, small business identified in other Articles in 9 A.A.C. 8 are also inspected by registered environmental health sanitarians, and for the same reason as with licensed food establishment, the other types of small business, such as licensed lodging establishments that comply with requirements in 9 A.A.C. 8, Article 13, are not expected to be subject to the amended rules. Additionally, the Department considered testing centers as small businesses that may be subjected to the rules, and even though testing centers may received a minimal to moderate benefit from the amended rules; testing centers too are not subject to the rules in Article 4. The Department knows of no other small business that may be subject to the rules. The Department expects that the Department and applicants seeking registration as an environmental health sanitarian to be “subject to the rules.”

b. The administrative and other costs required for compliance with the rules

The Department does not expect small businesses, discussed above, to incur administrative or other cost related to the rulemaking since not subjected to the rules.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department knows of no small businesses affected by the amended rules and knows of no other methods that would reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

In addition to consumers and the general public identified in Subsection 3, the Department does not expect other private persons and consumers are directly affected by the rules. In summary of Subsection 3, the Department considers applicants seeking registration as a sanitarian and possible taxpayers as types of private persons and consumers directly affected by the rules. The Department anticipates that the amended rules; related to the sanitarian examination, definition “testing center,” and amended administrative completeness review time-frame, will not increase costs or decrease benefits for the general public. However, the Department expects that the requirement for approved applicants to pay a sanitarian examination fee equal to the cost of the sanitarian examination may

provide a significant benefit to the taxpayers who under current rules would incur costs greater than the amount collected.

6. A statement of the probable effect on state revenues

The amended rules are specific to requirements for sanitarian examinations and third-party testing centers. This rulemaking does not increase state revenues or decrease 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 rulemaking.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable.

ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS (2021)

R9-16-401. Definitions

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

1. "Accredited" means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
3. "Applicant" means an individual who submits an application packet or renewal application packet for registration as an environmental health sanitarian.
4. "Application packet" means the information, documents, and fees required by the Department to:
 - a. Determine eligibility to take a sanitarian examination, and
 - b. Be registered as an environmental health sanitarian.
5. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a registered environmental health sanitarian's professional competence in disciplines directly related to the practice of a registered environmental health sanitarian.
7. "Continuing education hour" means 50 to 60 minutes of continuous course work.
8. "Course" means a workshop, seminar, lecture, conference, or other learning program activities as approved by the Department.
9. "Department" means the Arizona Department of Health Services established in A.R.S. § 36-104 and the Sanitarians Council established in A.R.S. § 36-136.01.
10. "Environmental health" means the science and practice of preventing human injury and illness and promoting well-being by identifying sources that produce potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions; and eliminating or minimizing exposure to the sources that adversely affect or may adversely affect human health.
11. "Environmental health sanitarian aide" means an individual who performs and assists with environmental health services as described and under the supervision of an individual in R9-16-403.
12. "Hazardous environmental agent" means a material, whether liquid, solid, gas, or sludge, that contains properties that make the material potentially harmful to public health or the environment.
13. "Immediate family member" means an individual related by birth, marriage, or adoption.

14. "License or licensed" means a permit, certificate, or similar form of approval issued by a state agency according to state law that an individual may practice in the profession indicated by the approval.
15. "Natural science" means a branch of science that deals with the physical world, including life, physical, and health sciences.
16. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
17. "Practice of a registered environmental health sanitarian" means acting under the authority of R9-16-402.
18. "Registered environmental health sanitarian" means the same as a "registered sanitarian" in A.R.S. § 36-136.01.
19. "Renewal application packet" means the information, documents, and fees required by the Department to apply for a renewal registration as an environmental health sanitarian.
20. "Sanitarian examination" means a test that consists of questions related to environmental health including natural sciences, facility and system inspections, investigations, compliance, responding to emergencies, and promoting environmental public health awareness.
21. "Semester credit" means one earned academic unit of study or equivalent, with a grade of "C" or better, at an accredited college or university by:
 - a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
 - b. Completing practical work for a class as determined by the accredited college or university.
22. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.
23. "Supervision" means being responsible for and providing direction to an individual who:
 - a. Performs and assists a registered environmental health sanitarian with environmental health services as described in R9-16-403, and
 - b. Is employed as an environmental health sanitarian aide in a position directly related to environmental health.
24. "Testing center" means a facility, approved by the Department that provides a proctored computer-based sanitarian examination.

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

- A.** An individual is eligible to be a registered environmental health sanitarian, if the individual meets at least one of the following:
1. Has completed at least 30 semester credits at an accredited college or university in the natural sciences or the equivalent credits from a college or university from outside the United States or its territories verified by a Department-approved third party evaluation service;
 2. Has completed at least five years of employment as a sanitarian aide in a position directly related to environmental health;
 3. Has completed at least five years of active military service in the field of environmental health;

4. Is currently licensed as a sanitarian in another jurisdiction, has passed a sanitarian examination that is equivalent to this state's examination as specified in A.R.S. § 36-136.01, and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3); or
 5. Has received a copy of official sanitarian examination test results from a testing center that contains the sanitarian examination test results with a score of 70% or more and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3).
- B.** An individual who is eligible to be a registered environmental health sanitarian according to subsection (A)(1) through (3) shall pass a sanitarian examination administered by a testing center.
- C.** The practice of a registered environmental health sanitarian may include:
1. Investigate, sample, measure, and assess hazardous environmental agents;
 2. Recommend and apply protective interventions that control hazards to health;
 3. Develop, promote, and enforce guidelines, policies, rules, statutes, and regulations;
 4. Perform system analysis;
 5. Interpret research utilizing science and evidence to understand the relationship between health and environment; or
 6. Interpret data and prepare technical summaries and reports.
- D.** A registered environmental health sanitarian shall:
1. Comply with A.R.S. § 41-1009;
 2. Comply with A.A.C. Title 9, Chapter 8; and
 3. Review and, as applicable, sign reports prepared by a sanitarian aide.

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

- A.** An environmental health sanitarian aide may perform and assist in any of the following environmental health services:
1. Inspections related to food establishments, food processing, food distribution, sewage and refuse disposal, water supplies, hotels, motels, campground, swimming pools, and other related public facilities regulated under A.A.C. Title 9, Chapter 8;
 2. Investigations of complaints to ensure compliance with environmental regulations;
 3. Routine samplings of water, sewage, food, and other samples for analysis; or
 4. Application of ordinances, codes, rules, and regulations governing public health.
- B.** An environmental health sanitarian aide shall:
1. Have reports reviewed by a registered environmental health sanitarian;
 2. Not approve or disapprove the operation of an establishment under A.A.C. Title 9, Chapter 8; and
 3. Not sign on behalf of a registered environmental health sanitarian.

- C. A sanitarian aide, who has completed at least five years of employment as an environmental health sanitarian aide in a position directly related to environmental health, may apply for registration as an environmental health sanitarian according to R9-16-405.
- D. An individual who provides supervision to an environmental health sanitarian aide shall:
 - 1. Ensure that the number of hours and type of supervision in providing environmental health services is consistent with:
 - a. The sanitarian aide's skills and experience,
 - b. The setting where the environmental health services are provided, and
 - c. The tasks assigned;
 - 2. Establish a record for the environmental health sanitarian aide who receives supervision that includes:
 - a. The sanitarian aide's name, address, e-mail address, and telephone number;
 - b. A plan indicating the types of skills and the number of hours allocated to the development of each skill that the environmental health sanitarian aide is expected to complete;
 - c. Documentation of evaluations provided to the environmental health sanitarian aide during the time supervision was provided; and
 - d. Documentation of when supervision began and ended; and
 - 3. Maintain a sanitarian aide's record throughout the period that the environmental health sanitarian aide received supervision.

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

- A. A registered environmental health sanitarian shall complete 12 continuing education hours during the 12 months prior to December 31 of each calendar year, unless the registered environmental health sanitarian:
 - 1. Has been a registered environmental health sanitarian for less than 12 months as indicated on the renewal application;
 - 2. Was prevented from completing continuing education according to subsection (A) due to a personal or immediate family member's illness during at least six continuous months of the preceding 12 months; or
 - 3. Was called to active military service.
- B. Except for a registered environmental health sanitarian in subsection (A)(1) and (3), by November 1 of each calendar year, a registered environmental health sanitarian may request to defer continuing education by submitting:
 - 1. A request in a Department-provided format that contains:
 - a. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;
 - b. The registered environmental health sanitarian's registration number;
 - c. A statement regarding the registered environmental health sanitarian's personal or immediate family member's illness;

- d. Indicate the number of continuing education hours requesting to defer;
 - e. An attestation that the Department is authorized to verify all information provided in the continuing education deferral request; and
 - f. The registered environmental health sanitarian's signature, including date of signature;
2. Documentation that verifies the duration of the registered environmental health sanitarian's personal or immediate family member's illness from the physician treating or who treated the registered environmental health sanitarian's personal or immediate family member's illness; and
 3. If a registered environmental health sanitarian has completed any continuing education hours, report the completed continuing education hours according to R9-16-406(D)(1)(h).
- C.** A registered environmental health sanitarian that deferred continuing education in subsection (B) shall obtain:
1. The deferred continuing education by the end of the subsequent renewal year, and
 2. The continuing education required in subsection (A) for the current renewal year.
- D.** A registered environmental health sanitarian called to active military service:
1. Shall submit a:
 - a. Written notice for renewal extension to the Department that includes:
 - i. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;
 - ii. The registered environmental health sanitarian's registration number;
 - iii. A statement stating the reason for the notice of renewal extension; and
 - iv. The registered environmental health sanitarian's signature, including date of signature; and
 - b. A copy of the registered environmental health sanitarian's deployment documentation;
 2. Retains registration as an environmental health sanitarian for the term of service or deployment plus 180 calendar days;
 3. Defers the requirement for completing the continuing education for the term of service or deployment plus 180 calendar days; and
 4. Shall submit a renewal application packet according to R9-16-406 after the term of service or deployment plus 180 calendar days.
- E.** The Department shall review the request to defer continuing education submitted in subsection (B) for approval according to R9-16-407 and Table 4.1.
- F.** If the Department denies a registered environmental health sanitarian's request to defer continuing education, the registered environmental health sanitarian shall submit the required continuing education hours in subsection (A) according to R9-16-406(D)(1)(h).

R9-16-405. Application for Sanitarian Examination and Registration

- A.** An individual may apply to take the sanitarian examination for registration as a sanitarian if the individual meets one of the eligibility requirements in R9-16-402(A)(1) through (A)(3).

- B.** At least seven calendar days before a Sanitarians Council meeting, an applicant for environmental health sanitarian registration shall submit an application packet to the Department containing:
1. The following information in a Department-provided format:
 - a. The applicant's name, address, e-mail address, and telephone number;
 - b. If applicable, applicant's former names;
 - c. The applicant's social security number, required under A.R.S. §§ 25-320 and 25-502;
 - d. If applicable, the applicant's current employment information:
 - i. The employer's name, address, e-mail address, and telephone number;
 - ii. The applicant's position title; and
 - iii. The applicant's employment start date;
 - e. If an applicant meets the eligibility requirement in R9-16-402(A)(1), the following for each college or university where the applicant completed semester credits or the equivalent credits from a college or university:
 - i. The college or university's name, address, e-mail address, and telephone number;
 - ii. The number of natural science semester credits completed; and
 - iii. If applicable, the degree obtained;
 - f. If an applicant meets the eligibility requirement in R9-16-402(A)(2), the following for each employer during the five years the applicant was employed as a sanitarian aide:
 - i. The employer's name, address, e-mail address, and telephone number;
 - ii. The name, title, e-mail address, and telephone number of a contact individual for the employer;
 - iii. The applicant's position and description of responsibilities; and
 - iv. The months and years of employment;
 - g. If an applicant meets the eligibility requirement in R9-16-402(A)(3), the following for each active military service assignment during the five years the applicant held a military job position in the field of environmental health:
 - i. The military branch name, address, e-mail address, and telephone number;
 - ii. The name, title, e-mail address, and telephone number of a contact individual from the military branch;
 - iii. The applicant's military job position and description of responsibilities; and
 - iv. The months and years of active military service assignments;
 - h. If an applicant meets the eligibility requirement in R9-16-402(A)(4), the following for a sanitarian licensed in another state or jurisdiction:
 - i. The state, county, and city that issued the applicant's current license as a sanitarian;
 - ii. The testing organization that administered the sanitarian examination;
 - iii. The name of the sanitarian examination;

- iv. The sanitarian examination administration date;
- v. The number of sanitarian examination questions;
- vi. The sanitarian examination score;
- vii. The other eligibility requirement in R9-16-402(A)(1) through (A)(3) met by the applicant; and
- viii. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
- i. If an applicant meets the eligibility requirement in R9-16-402(A)(5), an applicant shall provide the following information:
 - i. The name of the testing center;
 - ii. The date the sanitarian examination was completed;
 - iii. The sanitarian examination score; and
 - iv. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
- j. Whether the applicant is or has been licensed as a sanitarian in another state or jurisdiction;
- k. Whether the applicant has had an application for licensure as a sanitarian denied in a state or jurisdiction;
- l. If the applicant has had an application for licensure as a sanitarian denied, the:
 - i. Reason for denial;
 - ii. Date of the denial; and
 - iii. Name, address, and telephone number of the licensing agency that denied the applicant's application;
- m. Whether the applicant has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction;
- n. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement, the:
 - i. Reason for the suspension, revocation, or consent agreement;
 - ii. Date of the suspension, revocation, or consent agreement; and
 - iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement with the applicant;
- o. Whether the applicant has been convicted of a felony or a misdemeanor related to the functions of the applicant's employment or occupation as a sanitarian in this state or another state;
- p. If the applicant has been convicted of a felony or a misdemeanor in subsection (o):
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;

- q. Whether the applicant agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-16-407;
 - r. An attestation that:
 - i. The applicant authorizes the Department to verify all information provided in the application packet, and
 - ii. The information submitted as part of the application packet is true and accurate; and
 - s. The applicant's signature and date of signature;
2. In addition to the application in subsection (B)(1), the following:
- a. A copy of applicant's Social Security card;
 - b. Proof of U.S. citizenship or alien status according to A.R.S. § 41-1080;
 - c. If applicable, a copy of an applicant's sanitarian license issued by another state or jurisdiction;
 - d. If an official transcript is issued by a college or university from outside of the United States or its territories, documentation from a third party evaluation service verifying equivalent credits identified in subsection (B)(1)(e);
 - e. If applicable, a letter verifying an applicant's start and end dates of employment for each employer identified in subsection (B)(1)(f);
 - f. If applicable, a letter verifying an applicant's start and end dates of the military job position for each active military service assignment identified in subsection (B)(1)(g);
 - g. If applicable, documentation of the completed sanitarian examination, including the sanitarian examination test results, from the testing center or jurisdiction that administered the sanitarian examination required by another state or jurisdiction in subsection (B)(1)(h); and
 - h. If applicable, a copy of the official notice from a testing center in subsection (B)(1)(i); and
3. The nonrefundable \$25 application fee.
- C.** If an official transcript documents natural science semester credit hours identified in subsection (B)(1)(e), an applicant shall instruct the college or university to send the official transcript to the Department.
- D.** The Department shall review an application packet for an applicant to take a sanitarian examination according to R9-16-407 and Table 4.1.
- E.** The Department shall review a sanitarian examination for an applicant licensed by another state or jurisdiction for approval for the applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.
- F.** An applicant approved to take a sanitarian examination shall:
- 1. Select a testing center,
 - 2. Take a scheduled sanitarian examination administered by the testing center,
 - 3. Pass the sanitarian examination with a score of 70% or more and submit a copy of the applicant's official sanitarian examination test results to the Department.

- G. The Department shall review an application packet for approval for an applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.
- H. An applicant, who does not submit a copy of official sanitarian examination test results to the Department in subsection (F) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination, shall submit a new application packet according to R9-16-405(B).
- I. An applicant, who submits a copy of official sanitarian examination test results to the Department in subsection (F) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination and does not score 70% or more, shall:
 - 1. Have 12 months from the date of the approval letter the applicant received from the Department to provide a copy of official sanitarian examination test results in subsection(F) ; and
 - 2. Comply with subsection (F)(1) through (F)(3) to retake the sanitarian examination.

R9-16-406. Application for Renewal Registration

- A. Except as provided in R9-16-404(D), a registered environmental health sanitarian shall submit an application packet for registration renewal on or before December 31 of each calendar year.
- B. A registered environmental health sanitarian who does not submit a renewal application packet by December 31 has a grace period until February 15 to submit a renewal application packet.
- C. A registered environmental health sanitarian, who does not submit a renewal application packet by February 15, shall not practice as a registered environmental health sanitarian.
- D. By December 31 of each calendar year, an applicant shall submit to the Department a renewal application packet containing:
 - 1. The following information in a Department-provided format:
 - a. The applicant's name, address, e-mail address, and telephone number;
 - b. The applicant's environmental health sanitarian registration number;
 - c. Whether the applicant, since the applicant last submitted an application packet or renewal application packet, has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with another jurisdiction;
 - d. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement with another jurisdiction, the:
 - i. Reason for the suspension, revocation, or consent agreement;
 - ii. Date of the suspension, revocation, or consent agreement; and
 - iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement;
 - e. Whether the applicant, since the applicant last submitted a renewal application packet, has been convicted of a felony or a misdemeanor related to the applicant's employment or occupation as a sanitarian in this state or another jurisdiction;

- f. If the applicant has been convicted of a felony or a misdemeanor as stated according to subsection (e):
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
- g. Whether the applicant requested to defer continuing education due to a personal or immediate family member's illness according to R9-16-404(B);
- h. Except for a registered environmental health sanitarian in R9-16-404(A), for each continuing education course completed during the previous 12 months, the following:
 - i. The course title,
 - ii. A course description,
 - iii. The name of the individual providing the continuing education course,
 - iv. The date the continuing education course was completed, and
 - v. The total number of continuing education hours attended;
- i. Whether the applicant has been a registered environmental health sanitarian for less than 12 months according to R9-16-404(A)(1);
- j. An attestation that:
 - i. The applicant affirms that the continuing education courses specified according to subsection (h) are applicable and consistent with the Department's approved continuing education courses or with the practice of a registered environmental sanitarian described in R9-16-402(C);
 - ii. The applicant authorizes the Department to verify all information provided in the renewal application packet; and
 - iii. The information submitted as part of the renewal application packet is true and accurate; and
- k. The applicant's signature and date of signature;
- 2. If applicable, a copy of the approved request to defer continuing education, and
- 3. The \$10 renewal application fee.

E. If a registered environmental health sanitarian does not submit a renewal application packet in subsection (D) by February 15:

- 1. The registered environmental health sanitarian's registration expires on February 16; and
- 2. Before practicing as a registered environmental health sanitarian, a registered environmental health sanitarian whose environmental health sanitarian registration expired shall submit a new application packet according to R9-16-405.

- F.** The Department shall review the renewal application packet for approval of registration as an environmental health sanitarian according to R9-16-407 and Table 4.1.

R9-16-407. Time-frames

- A.** The overall time-frame begins, for:
1. A sanitarian examination approval, on the date the Department receives an application packet in R9-16-405;
 2. An environmental health sanitarian registration approval, on the date the Department receives an official notice for an applicant's sanitarian examination test result administered by:
 - a. A testing organization described in R9-16-405(B)(1)(i) or (G), or
 - b. A testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction described in R9-16-405(B)(1)(h);
 3. A continuing education deferral approval, on the date the Department receives the continuing education deferral request in R9-16-404; and
 4. A renewal registration approval, on the date the Department receives a renewal application packet in R9-16-406.
- B.** The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.
- C.** Within the administrative completeness review time-frame in Table 4.1, the Department shall:
1. Provide a notice of administrative completeness to an applicant; or
 2. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.
- D.** If the Department provides a notice of deficiencies to an applicant:
1. The administrative completeness review time-frame and the overall time-frame are suspended after the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
 2. If the applicant submits the missing information or documents to the Department within the time-frame in Table 4.1, the substantive review time-frame resumes on the date the Department receives the missing information or documents; and
 3. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 4.1, the Department shall consider the application or the request withdrawn.
- E.** If the Department issues a registration or notice of approval during the administrative completeness review time-frame, the Department may not issue a separate written notice of administrative completeness.
- F.** Within the substantive review time-frame specified in Table 4.1, the Department:
1. Shall approve an:
 - i. Applicant's request for registration as an environmental health sanitarian or

- ii. Applicant, who did not score 70% or more on the sanitarian examination, to resubmit a sanitarian examination according to R9-16-405(J);
 - 2. Shall deny an applicant's request for registration as an environmental health sanitarian;
 - 3. May make a written comprehensive request for additional information or documentation; and
 - 4. May make supplemental requests for additional information and documentation if agreed to by the applicant.
- G.** If the Department provides a written comprehensive request for additional information or documentation or a supplemental request to the applicant:
- 1. The substantive review time-frame and overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the Department receives the information and documents requested; and
 - 2. The applicant shall submit to the Department the information and documents listed in the written comprehensive request within 15 calendar days after the date of the written comprehensive request or supplemental request.
- H.** The Department shall issue:
- 1. An approval to an applicant who submits:
 - a. An application packet to take a sanitarian examination that complies with the requirements in R9-16-405;
 - b. An application packet and a sanitarian examination with a score of 70% or more from a testing organization approved by the Department that complies with the requirements in R9-16-405;
 - c. An application packet and a sanitarian examination test results from the testing organization or jurisdiction that administered the sanitarian examination that complies with the requirements in R9-16-405;
 - d. A continuing education deferral request that complies with the requirements in R9-16-404; and
 - e. An application for renewal registration that complies with the requirements R9-16-406; or
 - 2. A denial to an applicant, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:
 - a. The applicant does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or
 - b. The applicant does not comply with A.R.S. § 36-136.01 and this Article.

Table 4.1 Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-	Time to Respond to Deficiency	Substantive Review Time-frame	Time to Respond to Written

			frame	Notice		Comprehensive Request
Sanitarian Examination (R9-16-405)	A.R.S. § 36-136.01(B)	150	30	30	120	15
Initial Registration (R9-16-405)	A.R.S. § 36-136.01(B)	40	10	15	30	15
Registration by Reciprocity (R9-16-405)	A.R.S. § 36-136.01(C)	150	30	30	120	15
Deferred Continuing Education (R9-16-404)	A.R.S. § 36-136.01(E)	45	30	15	15	15
Renewal Registration (R9-16-406)	A.R.S. § 36-136.01(D)	75	60	15	15	15

R9-16-408. Requesting a Change

Within 30 calendar days after the effective date of the change, a registered environmental health sanitarian requesting a change to personal information shall submit, in a Department-provided format:

1. A written notice stating the information to be changed and indicating the new information, and
2. If the change is to the registered environmental health sanitarian's legal name, a copy of one of the following with the registered environmental health sanitarian's new name:
 - a. Marriage certificate,
 - b. Divorce decree,
 - c. Professional license, or
 - d. Other legal document establishing the registered environmental health sanitarian's legal name.

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

- A.** The Department may deny an application packet for approval for registration or renewal of registration if the Department determines that an applicant:
1. Intentionally provided false information or documents in an application packet or renewal-application packet;
 2. Had an application for a license related to the practice of a registered environmental health sanitarian denied by a state or jurisdiction;
 3. Had a license related to the practice of a registered environmental health sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction; or
 4. Was convicted of or entered into a plea of no contest to a misdemeanor resulting from employment as a registered environmental health sanitarian or a felony.

- B.** The Department may suspend or revoke a registered environmental health sanitarian's registration if the Department determines that a registered environmental health sanitarian:
1. Assisted an individual who is not a registered environmental health sanitarian to circumvent the requirements in this Article;
 2. Allowed an individual who is not a registered environmental health sanitarian to use the registered environmental health sanitarian's registration;
 3. Falsified records to interfere with or obstruct an investigation or regulatory process of the Department or a political subdivision; or
 4. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.
- C.** In determining whether to suspend or revoke a registered environmental health sanitarian's registration, the Department shall consider the threat to public health based on:
1. Whether there is repeated non-compliance with statutes or rules,
 2. Type of non-compliance,
 3. Severity of non-compliance, and
 4. Number of non-compliance actions.
- D.** The Department's notice of suspension or revocation to the applicant or registered environmental health sanitarian shall comply with A.R.S. Title 41, Chapter 6, Article 10.

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

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,

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

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

- D.** The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- E.** The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.
 2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- F.** The compensation of all personnel shall be as determined pursuant to section 38-611.
- G.** The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
- H.** Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- I.** The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
 2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

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) 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

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

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.
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,

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

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

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

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

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

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

- (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.

36-136.01. Sanitarians council; members; powers; fees; examinations; continuing education; exceptions; renewal; definition

- A.** The director shall establish a sanitarians council composed of five members. The members shall be the director of the department of health services or the director's representative, two governmental sanitarians, one of whom shall represent the two largest counties and one of whom shall represent the thirteen smaller counties, one industrial sanitarian and one lay person representing the public. The director shall be the council chairman. Members of the council are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.
- B.** The council shall provide for the classification of sanitarians, establish standards for persons employed as sanitarians and provide for the examination of applicants for registration as sanitarians. A person shall not be employed as a sanitarian by the state or any political subdivision of the state unless that person is registered by the department as a sanitarian of the class determined by the council to be appropriate for the performance of the functions of that person's employment.
- C.** The council may register an applicant as a sanitarian without an examination if both of the following are true:
 - 1. The applicant is registered, certified or licensed as a sanitarian in another jurisdiction and pays all applicable fees prescribed pursuant to this section.
 - 2. The council determines that the applicant meets at least one of the requirements prescribed pursuant to subsection I of this section and the examination requirements in the applicant's regulatory jurisdiction are substantially equivalent to this state's examination requirements.
- D.** Each registration expires on December 31 of each year. To renew a registration, the registrant must submit an application that contains the information prescribed by the director by rule and documentation of completion of at least ten hours of council approved continuing education during the previous twelve months. A registrant who has been registered for less than twelve months before the registration expiration date is not required to complete continuing education for the year that immediately precedes registration renewal. A registrant who does not renew the registration on or before February 15 of each year shall not perform the duties of a registered sanitarian.
- E.** Pursuant to rules adopted by the director, the council may defer the continuing education requirements prescribed in subsection D of this section.
- F.** The council shall charge and collect a nonrefundable application fee of twenty-five dollars. The council shall charge and collect a nonrefundable examination fee established by the director by rule that does not exceed the cost of administering the examination. A fee of ten dollars shall be charged and collected for the annual renewal of registration certificates.

9 A.A.C. 16, Article 4 Registration of Environmental Health Sanitarians 2021 Five-year-review Report

- G.** All monies collected by the sanitarians council shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- H.** Only a person with a valid registration certificate issued pursuant to this section may use the title "registered sanitarian" or the abbreviation "R.S." after the registrant's name.
- I.** An applicant is eligible for registration as a sanitarian if the applicant meets at least one of the following qualifications:
 - 1. The applicant has completed five years of employment as a sanitarian aide in either a recognized public health agency or private industry in a position directly related to environmental health.
 - 2. The applicant has satisfactorily completed at least five years of full-time military duty in the field of environmental health.
 - 3. The applicant has successfully completed thirty semester hours of credit at an accredited college or university in the natural sciences.
- J.** For the purposes of this section, "sanitarian" means a person who by education or experience in the physical, biological and sanitary sciences is qualified to carry out educational, investigational and technical duties in the field of environmental health.

GAME AND FISH COMMISSION

Title 12, Chapter 4, Article 5, Boating and Water Sports



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 8, 2021

SUBJECT: GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 5, Boating and Water Sports

Summary:

This Five Year Review Report (5YRR) from the Game and Fish Commission (Commission) relates to rules in Title 12, Chapter 4, Article 5, regarding Boating and Water Sports.

In the previous 5YRR for these rules, which the Council approved in June 2016, the Commission indicated that it would amend a number of rules in Article 5. In this 5YRR, the Commission indicates that it completed the rule amendments in two separate rulemakings: (1) fee related amendments were completed through a Notice of Final Exempt Rulemaking at 23 A.A.R. 1034, May 5, 2017; and (2) other amendments were completed through a Notice of Final Rulemaking at 23 A.A.R. 1732, June 30, 2017.

Proposed Action

In this 5YRR, the Commission proposes to amend five rules identified in the report, and anticipates requesting an exception to the rulemaking moratorium in August 2021 and submitting a Notice of Final Rulemaking to the Council by September 2022.

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:**

The rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package the Council approved on June 6, 2017, except as follows:

R12-4-510. Refunds for Renewals: the rule was amended to allow a person to obtain a refund when the watercraft was registered in error. The Commission anticipated the proposed amendments would have little or no impact on the Commission or regulated community. However, this amendment resulted in an increase in refund requests for persons who paid the watercraft registration fees online for weekend use and then requested a refund the following week. The Commission proposes to remove rule language that allows a person to simply state they paid the watercraft registration fee in error.

R12-4-530. Third-Party Providers; Agents: the Commission did not anticipate the high employee turnover rate for third party providers would be as high as it is. This has resulted in the Commission expending resources greater than anticipated.

In an effort to reduce costs, the Commission states it is redesigning the Watercraft Registration database and believes the new system will help reduce the transaction error rate and eliminate some of the after-hours assistance now provided by the Commission. The Commission is considering allowing certain third-party agents greater administrative authority to correct entry errors in the new system. The high employee turnover rate will continue to represent a training issue for the Commission.

Stakeholders include the Commission, watercraft owners and operators, watercraft registrants, watercraft dealers, and third-party watercraft agents working on behalf of the Commission.

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 economic impact of the rules is minimal for most boat owners and operators. Most of the economic impact results from the cost of safety equipment and registration under the U.S. Coast Guard (U.S.C.G). regulations and state laws. Except as indicated below, the Commission believes the rules impose the least burdens and costs to persons regulated by the rules.

R12-4-502. Application for Watercraft Registration: subsection (F) of the rule requires an applicant for watercraft registration to submit one or more additional forms of documentation necessary to identify the specific watercraft by way of a unique identifier (typically a Hull Identification Number) and establish ownership. Acceptable documents include a letter of deletion, which is required when the watercraft was previously documented by the U.S.C.G. and the owner is now applying for registration in Arizona. The National Vessel Documentation Center is experiencing delays in the time necessary to issue a letter of deletion due to performance issues associated with its Information Technology System. This delay has resulted in the applicant's inability to provide documentation required to register the watercraft in Arizona. In an effort to provide better customer service, after reviewing applicable statutes and rules and consulting with U.S.C.G., the Commission proposes to amend the rule to allow an applicant to submit a form CG-1270 or Statement of Facts form when the watercraft was documented by U.S.C.G. immediately preceding application for watercraft registration in Arizona.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. As described in Item 7 of the 5YRR, the Commission received several comments/criticisms of the rules over the last five years. In the 5YRR, the Commission provides the comment/criticism received and the response thereto.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Commission states that the rules under review are clear, concise, and understandable.

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

Yes. The Commission states that the rules must be consistent with applicable federal regulations, Arizona statutes, and Arizona regulations. The Commission states that most of the rules under review are consistent with applicable rules and statutes, but identifies three rules that are not. For these three rules, the Commission identifies needed amendments to make the rules consistent with other rules and statutes. Those rules are:

- R12-4-501 (Boating and Water Sports Definitions);
- R12-4-518 (Regattas); and
- R12-4-519 (Reciprocity).

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Commission states that most of the rules under review are effective in achieving their objectives. However, the Commission identifies the following rules that it proposes to amend to increase their effectiveness, for the reasons identified in Item 3 of the 5YRR:

- **R12-4-504** (Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule);
- **R12-4-510** (Refund of Fees Paid in Error);
- **R12-4-514** (Liveries); and
- **R12-4-530** (Third-party Providers; Agents).

8. Has the agency analyzed the current enforcement status of the rules?

Yes. The Commission states that the rules are currently being enforced and that there have been no issues with the enforcement of the rules.

9. 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 12 of the 5YRR, the Commission identifies certain rules in Article 5 that are based on state law with no corresponding federal law/regulation. The Commission also identifies rules in Article 5 that do have corresponding federal laws/regulations, but states that the rules are not more stringent.

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 in Item 13 of the 5YRR that certain rules under review require the issuance of a “general permit” as defined in A.R.S. § 41-1001(11) and thus comply with A.R.S. § 41-1037.

For the other rules, the Commission states that they do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

Council staff finds that the Commission submitted an adequate report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



February 20, 2021

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 5. Boating and Water Sports

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 5 Boating and Water Sports which is due on February 28, 2021.

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 black ink, appearing to read "Ty E. Gray".

Ty E. Gray
Director

Title 12. Natural Resources
Chapter 4. Game and Fish Commission
Article 5 Boating and Water Sports
Five-year Review Report

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

For all rules within Article 5, the authorizing statutes are A.R.S. §§ 5-302 and 5-311(A)(1).		
For each rule within Article 5, the implementing statutes are as follows:		
R12-4-501.	Boating and Water Sports Definitions	A.R.S. §§ 5-301 and 5-311(A)(1)
R12-4-502.	Application for Watercraft Registration	A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327
R12-4-503.	Renewal of Watercraft Registration	A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327
R12-4-504.	Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule	A.R.S. §§ 5-311(A)(5), 5-321(H),5-321(K), and 5-321.01
R12-4-505.	Hull Identification Numbers	A.R.S. §§ 5-311(A)(5) and 5-321
R12-4-506.	Invalidation of Watercraft Registration	A.R.S. §§ 5-311(A)(5), 5-321, 5-326, 5-327, and 5-391(I)
R12-4-507.	Transfer of Ownership of an Abandoned or Unreleased Watercraft	A.R.S. §§ 5-311(A)(1) and 5-311(A)(5)
R12-4-508.	New Watercraft Exchanges	A.R.S. §§ 5-311(A)(5), 5-321, and 5-322
R12-4-509.	Watercraft Agents	A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327
R12-4-510.	Refunds for Renewals	A.R.S. § 5-311(A)(5)
R12-4-511.	Personal Flotation Devices	A.R.S. §§ 5-311(A)(5), 5-331, and 5-350(A)
R12-4-512.	Fire Extinguishers Required for Watercraft	A.R.S. §§ 5-311(A)(2), 5-311(A)(5) and 5-332
R12-4-513.	Watercraft Accident and Casualty Reports	A.R.S. §§ 5-311(A)(5), 5-311(A)(7), and 5-349
R12-4-514.	Liveries	A.R.S. §§ 5-311(A)(5) and 5-371
R12-4-515.	Display of Numbers and Decals	A.R.S. §§ 5-311(A)(5), 5-321(A), 5-322, 5-321, 5-326, and 5-327
R12-4-516.	Watercraft Sound Level Restriction	A.R.S. §§ 5-311(A)(2), 5-311(A)(3), 5-311(A)(5), and 5-336
R12-4-517.	Watercraft Motor and Engine Restrictions	A.R.S. §§ 5-311(A)(2) and 5-311(A)(3)
R12-4-518.	Regattas	A.R.S. §§ 5-311(A)(5), 5-311(A)(6), 5-336(C), 5-350(G), and 17-255.01
R12-4-519.	Reciprocity	A.R.S. §§ 5-311(A)(5) 5-321(A)(2), 5-322(C), and 5-322(F)
R12-4-520.	Arizona Uniform State Waterway Marking System	A.R.S. §§ 5-311(A)(4), 5-311(A)(5), 5-311(A)(7), and 5-361
R12-4-523.	Controlled Operation of Watercraft	A.R.S. §§ 5-311(A)(4), 5-311(A)(5), and 5-361
R12-4-524.	Water Skiing	A.R.S. §§ 5-311(A)(5), 5-311(A)(7), and 5-346
R12-4-525.	Watercraft Certificate of Number, Numbers, and Decal Revocation	A.R.S. §§ 5-311(A)(5),5-391(I), 41-1092, 41-1092.02, 41-1092.04, 41-1092.06, and 41-1092.11
R12-4-526.	Unlawful Mooring	A.R.S. § 5-311(A)(5)
R12-4-527.	Transfer of Ownership of a Towed Watercraft	A.R.S. §§ 5-311(A)(1), 5-324(E)(9), 5-399, 5-399.01, 5-399.02, and 5-399.03
R12-4-528.	Watercraft Checkpoints	A.R.S. §§ 5-311(A)(5), 5-311(A)(7), 5-391(B), 5-391(C), and 5-393
R12-4-529.	Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal	A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327
R12-4-530.	Third-party Providers; Agents	A.R.S. §§ 5-311(A)(5) and 5-321

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

R12-4-501. Boating and Water Sports Definitions. The rule establishes definitions that assist the regulated community and the public in understanding the unique terms used throughout 12 A.A.C. Chapter 4, Article 5. The rule was adopted to facilitate consistent interpretation of, and to prevent the regulated community from misinterpreting Commission rules.

R12-4-502. Application for Watercraft Registration. The rule establishes watercraft registration application requirements. The rule was adopted to ensure the Department provides and maintains the necessary information required under 33 C.F.R. 187 Vessel Identification System (VIS), which prescribes the owner and vessel information requirements for States electing to participate in VIS. The Department annually registers approximately 19,720 watercraft that are either new watercraft or new to this state.

R12-4-503. Renewal of Watercraft Registration. The rule establishes watercraft registration renewal requirements when the renewal is made in person, through the mail, or online. The Department annually renews approximately 108320 watercraft registrations, 55% of which are processed online, a 23% increase since 2016.

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule. The rule establishes motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, penalty for late registration, and a staggered watercraft registration schedule. The rule was initially adopted to establish the late registration penalty fee and various staggered schedules for the different types of watercraft registrations offered by the Department.

R12-4-505. Hull Identification Numbers. The rule establishes Hull Identification Number (HIN) requirements in compliance with U.S. Coast Guard (U.S.C.G.) vessel identification requirements of 33 C.F.R. 181. HINs are unique identifiers of watercraft for recall and warranty purposes, for the recovery of stolen watercraft, and to research the chain of ownership. The Department annually conducts approximately 1,900 inspections, of which approximately 140 inspections result in finding an obstructed or indecipherable HIN (e.g., the HIN is altered, covered with paint, gel coat, an after-market part, or other obstruction that obstructs the HIN or makes it indecipherable). Of those boats that are seized due to an altered HIN, approximately 20 are stolen watercraft. Even though statistics indicate most altered HINs are not concealing a stolen watercraft, the employee or officer who discovers the obstructed or indecipherable HIN has a duty to declare the HIN altered and seize the watercraft until the watercraft's status may be verified.

R12-4-506. Invalidation of Watercraft Registration. The rule establishes the circumstances under which the Department invalidates a watercraft registration and provides the Department with the authority to refuse to register a watercraft until the reason for the invalidity is corrected or no longer exists. The rule was adopted to ensure compliance with U.S.C.G. certificate of number requirements under 33 C.F.R. 173 Subpart D. For

example: the Department annually receives over 40 non-negotiable checks for watercraft registration fees. The Department annually invalidates approximately 1,300 watercraft registrations and decals.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft. The rule establishes requirements for transferring ownership of an unreleased or abandoned watercraft. Under R12-4-501, "abandoned watercraft" is any watercraft that has remained: on private property without the consent of the owner; unattended for more than 48 hours on a highway, public street, or other public property; unattended for more than 72 hours on state or federal lands or on public waterways unless in a designated moorage or anchorage area. Abandoned watercraft are unsightly, pose potential threats to navigation and to the environment through the discharge of oil and other pollutants. Under R12-4-501, "unreleased watercraft" means a watercraft for which there is no written release of interest from the registered owner. This occurs when a person sells a watercraft without proper documentation, such as when a watercraft is sold and the new owner never registers it. The rule provides the regulated community with an efficient manner in which to properly dispose of abandoned/unreleased watercraft that includes: determination of abandonment; determination of ownership; a notice of intent to sell/waiver of rights process with an appropriate waiting period, determination of disposition, and transfer of ownership, when warranted. If the Department finds a person who has a lawful interest in the watercraft, the abandoned watercraft process is terminated.

R12-4-508. New Watercraft Exchanges. The rule establishes requirements for issuing a duplicate registration for a new watercraft that is replaced due to a defect by the seller within 30 days of the purchase. The rule was adopted to ensure a person whose watercraft is replaced by the dealership does not pay a second registration fee. The Department annually processes approximately two watercraft exchanges.

R12-4-509. Watercraft Agents. The rule establishes watercraft agent application requirements and the authorization process for a dealer seeking to issue a 45-day temporary certificate of number upon the sale of a watercraft. The rule establishes watercraft agent application, inventory, and reporting requirements and the appropriate auditing and tracking mechanisms necessary to ensure compliance with applicable statutory requirements. A watercraft dealer may issue a 45-day temporary certificate of number immediately upon sale so the customer may enjoy the use of their new watercraft. The Department annually authorizes approximately 51 watercraft agents to issue temporary certificates of number, who in turn issue approximately 1,200 temporary certificates of number each year.

R12-4-510. Refunds for Renewals. The rule establishes requirements necessary to obtain a refund watercraft registration renewal fee and Nonresident Boating Safety Infrastructure fee, when applicable, when the watercraft owner paid the fees in error or sold the watercraft to another person prior to renewing the registration. The Department issues approximately 70 refunds under this rule; this figure has doubled since the last rule amendment.

R12-4-511. Personal Flotation Devices. The rule establishes personal flotation device (PFD) category and type

requirements specific to the operator, each passenger, and watercraft type. The rule was adopted to establish PFD category and type requirements in compliance with A.R.S. § 5-331 and U.S.C.G. regulations as required under A.R.S. § 5-311.

R12-4-512. Fire Extinguishers Required for Watercraft. The rule establishes fire extinguisher requirements specific to the type or class of watercraft. A.R.S. § 5-332 requires all watercraft fueled with volatile liquid to have aboard a U.S.C.G.-approved fire extinguisher that is available for immediate use, unless exempt. In addition, watercraft over twenty-six feet in length shall have aboard such fire extinguishers as may be prescribed or approved by the regulations of the U.S.C.G. The rule was adopted to prescribe requirements and exemptions for the possession of fire extinguishers to ensure compliance with U.S.C.G. regulations, with safety as the primary concern.

R12-4-513. Watercraft Accident and Casualty Reports. The rule establishes standardized reporting requirements that will comply with the U.S.C.G. boating incident reporting requirements. The Department is required to maintain and submit records of boating incidents to U.S.C.G. in order to maintain eligibility for U.S.C.G. Recreational Boating Safety Grants. The rule was adopted to ensure compliance with U.S.C.G. regulations; the information submitted to U.S.C.G. is used to establish regulations and safety standards, identify and remedy boat defects, educate recreational boaters, capture statistical data, investigate accidents, and measure the effectiveness of boating safety programs.

R12-4-514. Liveries. This rule establishes identification requirements for rental watercraft when the certificate of number is retained on shore by the owner. The rule was adopted to ensure compliance with A.R.S. §§ 5-321(F), 5-371 and 33 C.F.R. 173 certificate of number requirements.

R12-4-515. Display of Numbers and Decals. The rule establishes requirements for the display of watercraft numbers and registration decals issued by the Department. A.R.S. § 5-321(E) requires the Department issue a watercraft registration applicant "two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals in such a manner as may be prescribed by rules of the Commission." The Department-issued numbers and decals are the means of identifying a watercraft and its registration status. The rule was adopted to ensure compliance with 33 C.F.R. 174 State numbering systems requirements.

R12-4-516. Watercraft Sound Level Restriction. The rule establishes sound level restrictions and testing requirements with the intent of protecting human health and minimizing the annoyance of noise to the general public, in compliance with the authority given to each state under the Noise Control Act of 1972 and Quiet Communities Act of 1978. The rule was adopted to ensure compliance with A.R.S. § 5-336, which is intended to prevent excessive or unusual noise.

R12-4-517. Watercraft Motor and Engine Restrictions. The rule establishes motorized engine restrictions on select bodies of water across the state to minimize the impact to aquatic resources and enhance public safety. Motorized engine restrictions have successfully led to improved air quality, aquatic viability, water quality, and pristine conditions along mountain lakes.

R12-4-518. Regattas. The rule prescribes regulations for the issuance of permits for motor boat races, regattas, or other events, as authorized under A.R.S. § 5-311(A)(6). The Commission has elected not to exercise its authority under this statute. U.S.C.G. issues permits for events held on the Colorado River under 33 C.F.R. § 100.15. The rule authorizes the Department to enforce the terms and conditions of these federal permits.

R12-4-519. Reciprocity. The rule establishes the period of time during which a registration issued by another jurisdiction is valid for operating a watercraft after Arizona becomes the new state of principal use. The rule was adopted to implement the authority prescribed under A.R.S. § 5-322(C), which states, "All owners of motorized watercraft when in the course of interstate operation displaying a current and valid number issued under an approved federal numbering system of the U.S.C.G., a state, the Commonwealth of Puerto Rico, the Virgin Islands, Guam or the District of Columbia shall register such watercraft with the department before the expiration of the reciprocity period prescribed by rules of the commission." Under 33 C.F.R. 173.17, when a vessel is numbered in a State, it is deemed in compliance with the numbering system of a State in which it temporarily is operated; and when a vessel is removed to a new State of principal operation, the issuing authority of that State shall recognize the validity of the number issued by the original State for 60 days.

R12-4-520. Arizona Uniform State Waterway Marking System, the objective of this rule is to incorporate a uniform state waterway marking system in accordance with U.S.C.G. regulations. The Department deals with inland waterways and one federal navigable water. A.R.S. § 5-361 requires the Commission to adopt rules for uniform navigational marking standards of waters. These markings provide key information such as hazards, information, names of coves, and other geographical features.

R12-4-523. Controlled Operation of Watercraft, the rule establishes watercraft operational restrictions for waterways restricted by lawfully placed controlled-use markers and the exceptions under which law enforcement or persons engaged in a rescue operation or participating in a regatta may operate their watercraft in a manner contrary to lawfully imposed restrictions.

R12-4-524. Water Skiing. The rule establishes water ski observer requirements. In addition, the rule establishes it is the responsibility of the operator to ensure all persons being towed behind a watercraft are wearing a personal flotation device. The rule also prohibits the operation of a watercraft where a person is holding onto any transom of the watercraft. The rule language mirrors observer requirements in place in California and Nevada, which helps to reduce regulatory inconsistencies.

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation. The rule establishes the revocation process for certificates of number and decals issued by the Department. The rule was adopted after a 2001 Sunset Audit indicated the Department should adopt a rule to establish the revocation authorized under A.R.S. § 5-391(I). Since the rule was adopted, the Department has not revoked any watercraft certificate of numbers, numbers, or decals.

R12-4-526. Unlawful Mooring. The rule establishes watercraft mooring restrictions, prohibitions, and exceptions. The rule was adopted to persons from mooring watercraft for extended periods of time.

R12-4-527. Transfer of Ownership of a Towed Watercraft. The rule establishes transfer of ownership requirements for a watercraft in possession of a towing company. The rule was adopted to establish requirements necessary to ensure compliance with A.R.S. § 5-399 *et al*, which prescribes the basic procedures that allow a towing company to take ownership of an unclaimed watercraft. The Department annually transfers approximately 240 watercraft to towing companies.

R12-4-528. Watercraft Checkpoints. The rule establishes watercraft checkpoint requirements. The rule establishes the procedures a watercraft operator must follow when directed to stop by a law enforcement officer. The Department annually participates in approximately six multi-agency watercraft checkpoints to screen for unsafe or impaired watercraft operators on state waterways or to gather demographic, statistical, and compliance information.

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal. The rule establishes the nonresident boating safety infrastructure fee (NBSIF) schedule, based on the length of the watercraft, and the manner in which a non-resident recreational watercraft owner may provide acceptable proof of payment of the fee. The rule was adopted pursuant to A.R.S. § 5-326, which requires nonresident owners of watercraft who establish this state as the state of principal operation to pay an additional boating safety infrastructure fee assessed pursuant to A.R.S. § 5-327 before placing that watercraft on the waters of this state. The Department annually collects approximately \$2,909,035 from nonresidents who claim Arizona as their state of principal operation.

R12-4-530. Third-party Providers; Agents. This rule establishes requirements necessary to allow third party providers selected by a competitive bid process to perform services on behalf of the Department. The rule establishes the types of watercraft transactions a third party may process, minimum quality standards of service, remission of watercraft registration fees, authority for third-party provider to collect a reasonable fee for its services, and enables the Department to suspend or cancel an authorization and/or certification when it determines an authorized third-party provider violated any applicable laws, with hearing and appeal rights. The rule allows these providers to process less complex watercraft transactions, such as watercraft transfers, registration renewals, duplicate registrations and decals, and new watercraft registrations. The Department oversees approximately five third party providers, which includes 15 third-party customer service agents. These third-party providers process

approximately 1,954 transactions on behalf of the Department with an average error rate of 11%.

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. In addition, comments received since the last rule review was conducted are reviewed. Comments indicate the rules are understandable and applicable. The Department believes this data indicates the rules are effective. The following rules are effective in achieving the objectives stated above:

R12-4-501. Boating and Water Sports Definitions

R12-4-502. Application for Watercraft Registration

R12-4-503. Renewal of Watercraft Registration

R12-4-505. Hull Identification Numbers

R12-4-506. Invalidation of Watercraft Registration

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-508. New Watercraft Exchanges

R12-4-509. Watercraft Agents

R12-4-511. Personal Floatation Devices

R12-4-512. Fire Extinguishers Required for Watercraft

R12-4-513. Watercraft Accident and Casualty Reports

R12-4-515. Display of Numbers and Decals

R12-4-516. Watercraft Sound Level Restriction

R12-4-517. Watercraft Motor and Engine Restrictions

R12-4-518. Regattas

R12-4-519. Reciprocity

R12-4-520. Arizona Uniform State Waterway Marking System

R12-4-523. Controlled Operation of Watercraft

R12-4-524. Water Skiing

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation

R12-4-526. Unlawful Mooring

R12-4-527. Transfer of Ownership of a Towed Watercraft

R12-4-528. Watercraft Checkpoints

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

The Department proposes to increase the effectiveness of the following rules as indicated:

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule. The Department's website enables watercraft registration renewals 24 hours a day, 7 days a week. The Department

therefore recommends repealing the exemption for watercraft registrations that expire on a Saturday, Sunday, or state holiday. Under A.R.S. § 5-321, a penalty is authorized where a motorized watercraft registration is not renewed by the current expiration date. This penalty is not assessed when the ownership of the watercraft has been transferred or the more than twelve months have lapsed since the expiration date of the last registration or renewal. The current watercraft registration fees have been in place for nearly 50 years. The Department intends to conduct a cost analysis and benchmark with other western states to evaluate whether or not these fees should be increased. The Commission may establish fees for watercraft registrations, nonresident boating safety infrastructure fees, watercraft transfers, duplicate certificates of number or annual decal, and dealer watercraft certificates of number under A.R.S. § 5-328.

R12-4-510. Refund of Fees Paid in Error. The rule was last amended to allow a person to obtain a refund when the watercraft was registered in error. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community. However, this amendment resulted in an increase in refund requests for persons who paid the watercraft registration fees online for weekend use and then request a refund the following week. When renewing a watercraft registration online, the person registers their watercraft for the current registration period and is issued a 45-day temporary registration. Under A.R.S. 5-321(L), if more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived. Nonresident watercraft owners have learned to "game the system" by renewing the registration for their watercraft online and then using R12-5-510(A)(3) to obtain a refund, use the 45-day temporary to recreate in Arizona, and then turn around and register their watercraft for the following year. Since the rule was amended in 2017, the number of refunds requested has risen dramatically: 2017, 48 watercraft registration refunds were processed; 2018, 32 watercraft registration refunds were processed; 2019, 45 watercraft registration refunds were processed; and in 2020, 73 watercraft registration refunds were processed. In addition, the refund process involves multiple state agencies: the Department initiates the refund action; the General Accounting Office (GAO) processes the request and issues the warrants (refunds); the Department receives the warrants, verifies the payee and warrant amount, mails valid warrants, and initiates warrant corrections when necessary. Each refund costs the Department approximately \$3 to \$6 to process (Department materials and equipment as well as GAO costs are not included in this estimate). The Department proposes to remove rule language that allows a person to simply state they paid the watercraft registration fee in error.

R12-4-514. Liveries. This rule applies to only those livery operations that voluntarily register as a business conducting watercraft for hire operations, but lacks consequences for those liveries that do not register. The Department intends to benchmark with other western states to learn how they addressed this issue and then determine whether a rule amendment would make the rule more effective.

R12-4-530. Third-party Providers; Agents. The Department did not anticipate the high employee turnover rate for third parties businesses. The Department now devotes one full-time employee to providing technical support to third parties, auditing 100% of the transactions processed by third-parties, and following up to ensure errors

are corrected. The Department provides additional training sessions and materials to new third-party provider employees and technical support during the evening hours, weekends and holidays.

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 must be consistent with U.S.C.G. regulations, 33 C.F.R. Chapter 1, and Title 5, Title 17, and A.A.C. Title 12, Chapter 4. The following rules are consistent with and are not in conflict:

R12-4-502. Application for Watercraft Registration

R12-4-503. Renewal of Watercraft Registration

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule

R12-4-505. Hull Identification Numbers

R12-4-506. Invalidation of Watercraft Registration

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-508. New Watercraft Exchanges

R12-4-509. Watercraft Agents

R12-4-510. Refunds for Renewals

R12-4-511. Personal Floatation Devices

R12-4-512. Fire Extinguishers Required for Watercraft

R12-4-513. Watercraft Accident and Casualty Reports

R12-4-514. Liveries

R12-4-515. Display of Numbers and Decals

R12-4-516. Watercraft Sound Level Restriction

R12-4-517. Watercraft Motor and Engine Restrictions

R12-4-520. Arizona Uniform State Waterway Marking System

R12-4-523. Controlled Operation of Watercraft

R12-4-524. Water Skiing

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation

R12-4-526. Unlawful Mooring

R12-4-527. Transfer of Ownership of a Towed Watercraft

R12-4-528. Watercraft Checkpoints

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

R12-4-530. Third-party Providers; Agents

The following rules are not consistent with or are in conflict with statutes and rules; the Department proposes to increase their consistency with statutes and rules as indicated:

R12-4-501. Boating and Water Sports Definitions, 33 C.F.R. 187.303 establishes the terms a state must define in order to participate in the Vessel Identification System (VIS). Since the last rulemaking, the federal regulation

was amended to require state agencies to also define: "issuing authority," "secured party," "secured interest," and "titling authority." The Department proposes to amend the rule to define these

R12-4-518. Regattas. Since the last rulemaking, the Aquatic Invasive Species Article was renumbered from 11 to 9. The Department proposes to amend the rule to reference the current Article number.

R12-4-519. Reciprocity. 33 C.F.R. 173.17 a state to recognize the validity of a number issued by the original state for 60 days. A.R.S. § 5-322(E) states the current number issued by another jurisdiction shall be recognized for a period 90 days. While this is not an inconsistency that may be corrected by rule, the Department recommends amending A.R.S. § 5-322(E) to reflect the 60-day period to ensure compliance with the federal regulation.

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

The rules are currently being enforced. Department employees can inspect watercraft and documentation for rule compliance when processing watercraft related transactions. Officers can check for rule compliance when routinely patrolling the waterways of Arizona, and issue warning orders or citations and/or order the operator ashore to correct the violation. To the extent that the Department is aware, there have been no problems with the enforcement of the following rules:

R12-4-501. Boating and Water Sports Definitions

R12-4-502. Application for Watercraft Registration

R12-4-503. Renewal of Watercraft Registration

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule

R12-4-505. Hull Identification Numbers

R12-4-506. Invalidation of Watercraft Registration

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-508. New Watercraft Exchanges

R12-4-509. Watercraft Agents

R12-4-510. Refunds for Renewals

R12-4-511. Personal Floatation Devices

R12-4-512. Fire Extinguishers Required for Watercraft

R12-4-513. Watercraft Accident and Casualty Reports

R12-4-514. Liveries

R12-4-515. Display of Numbers and Decals

R12-4-516. Watercraft Sound Level Restriction

R12-4-517. Watercraft Motor and Engine Restrictions

R12-4-518. Regattas

R12-4-519. Reciprocity

- R12-4-520. Arizona Uniform State Waterway Marking System
- R12-4-523. Controlled Operation of Watercraft
- R12-4-524. Water Skiing
- R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation
- R12-4-526. Unlawful Mooring
- R12-4-527. Transfer of Ownership of a Towed Watercraft
- R12-4-528. Watercraft Checkpoints
- R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal
- R12-4-530. Third-party Providers; Agents

6. Clarity, conciseness, and understandability of the rule.

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

- R12-4-501. Boating and Water Sports Definitions
- R12-4-502. Application for Watercraft Registration
- R12-4-503. Renewal of Watercraft Registration
- R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule
- R12-4-505. Hull Identification Numbers
- R12-4-506. Invalidation of Watercraft Registration
- R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft
- R12-4-508. New Watercraft Exchanges
- R12-4-509. Watercraft Agents
- R12-4-510. Refunds for Renewals
- R12-4-511. Personal Floatation Devices
- R12-4-512. Fire Extinguishers Required for Watercraft
- R12-4-513. Watercraft Accident and Casualty Reports
- R12-4-514. Liveries
- R12-4-515. Display of Numbers and Decals
- R12-4-516. Watercraft Sound Level Restriction
- R12-4-517. Watercraft Motor and Engine Restrictions
- R12-4-518. Regattas
- R12-4-519. Reciprocity
- R12-4-520. Arizona Uniform State Waterway Marking System
- R12-4-523. Controlled Operation of Watercraft
- R12-4-524. Water Skiing
- R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation
- R12-4-526. Unlawful Mooring

R12-4-527. Transfer of Ownership of a Towed Watercraft

R12-4-528. Watercraft Checkpoints

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

R12-4-530. Third-party Providers; Agents

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on 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 did not receive any written comments for the following rules.

R12-4-501. Boating and Water Sports Definitions

R12-4-502. Application for Watercraft Registration

R12-4-503. Renewal of Watercraft Registration

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule

R12-4-505. Hull Identification Numbers

R12-4-506. Invalidation of Watercraft Registration

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-508. New Watercraft Exchanges

R12-4-510. Refunds for Renewals

R12-4-512. Fire Extinguishers Required for Watercraft

R12-4-513. Watercraft Accident and Casualty Reports

R12-4-514. Liveries

R12-4-515. Display of Numbers and Decals

R12-4-516. Watercraft Sound Level Restriction

R12-4-518. Regattas

R12-4-519. Reciprocity

R12-4-520. Arizona Uniform State Waterway Marking System

R12-4-523. Controlled Operation of Watercraft

R12-4-524. Water Skiing

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation

R12-4-526. Unlawful Mooring

R12-4-527. Transfer of Ownership of a Towed Watercraft

R12-4-528. Watercraft Checkpoints

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

R12-4-530. Third-party Providers; Agents

The Department received the following comments:

Mandatory Boating Safety Education:

Written Comment: February 14, 2017. I have seen some dangerous things while boating at lakes in Arizona. I believe a person who purchases a boat, whether it is from a private party or retailer, should have to take a boating safety class before registering their boat. I believe this will promote safety on the water.

Written Comment: May 10, 2016. These comments are in regards to the proposals outlined in the Havasu National Wildlife Refuge (NWR) boating compatibility determination, although I feel the changes described do not go far enough to mitigate the safety and wildlife concerns raised in the document. It is critically important that a reasonable speed limit be implemented on the narrow, congested river and ideally Lake Havasu. This is specifically not a call for the river to be a no-wake zone. Based on my experience on the river, I suggest that speeds in excess of 35-40 mph are unsafe and should be prohibited by law. This is a modest change which should have minimal effect on most users who are already travelling at about that speed, but the overpowered monster boats need to slow down or go to less congested waters. I do not feel as strongly about the Lake, but submit that 50 mph is probably a reasonable upper limit for this body of water given the excessive density of boats. I understand that there may be concerns with USFWS's authority to make such unilateral changes on a navigable waterway, but in tandem with the U.S.C.G. and state agencies, this can and should be implemented immediately. Arizona should immediately draft legislation creating a mandatory boater education requirement. All parties to the management of Lake Havasu should evaluate the number of users already on the Lake and rethink developing additional infrastructure to promote more users. The Department should implement "open container" laws modeled after those which have become standard on our roadways. Drunken boating is every bit as dangerous as drunken driving and our laws need to reflect this reality.

Agency Response: The Department recognizes mandatory boating education has shown to be effective in reducing incidents and fatalities in those states that have enacted mandatory education through legislation. However, our data indicates nonresidents are responsible for most of the incidents/fatalities that occur in Arizona. In addition, a large number of watercraft are sold by private parties. Therefore, requiring a resident to pass a boating education course upon buying a new boat is not likely to have a significant impact on the number of Arizona incidents/fatalities. In 2018 California enacted the California Boater Card program with mandatory boating education for operators of motorized boats on state waterways. The California law requires a person to pass a National Association of State Boating Law Administrators state-approved boater safety education examination. According to the 2019 Recreational Boating Statistics report, the number of incidents/fatalities in both Arizona and California have declined.

The Department cannot address the proposals outlined in the Havasu NWR boating compatibility determination

through this report. While State law does not require mandatory boater education, the Department offers “free” boating safety classes in Lake Havasu City during the summer months as well as on-line courses. The operating under the influence (OUI) laws are modeled after the State's driving while intoxicated laws, see A.R.S. Title 5, Chapter 3. Article 10.

R12-4-509. Watercraft Agents

Written Comment: May 17, 2016. The dealers need the ability to issue temporary permits for used vessels also. It is very difficult to get someone enthusiastic about buying a pre-owned boat only to tell them that they have to park it until they receive the registration.

Agency Response: The Commission amended R12-4-509 in 2017 to allow an authorized watercraft dealer to issue temporary registrations for used watercraft.

R12-4-511. Personal Flotation Devices

Written Comment: May 11, 2016. I have a "River Throw Bag in Lieu of Type IV PFD on rough waters," what would it take to get a State Regulation and/or a rule change to allow a river throw bag to be used in lieu of a Type IV PFD on rough water river sections in Arizona? As a river runner on the Colorado River in Grand Canyon, I know that wearable PFD's are required at all time by everyone regardless of age when on watercraft not tied to shore. A Type IV PFD is also required for all watercraft 16 feet and over in the Grand Canyon. Utah's National Park Service regulation (NPS), R651-215-8. River Throw Bag in Lieu of Type IV PFD states, "On a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried." This regulation recognizes that on rough water river sections, where PFD's are required for everyone regardless of age, a River Throw Bag may be used in place of a Type IV Throw Cushion. I asked U.S.C.G. why Utah NPS allows River Throw Bags and the response was, "We have not concluded this definitively, but believe that perhaps the reason for the different language between Canyonlands National Park and Grand Canyon National Park is their location in separate States (Utah and Arizona) which may have some effect on the allowances and wording ultimately utilized by the NPS." Under R12-4-511(C) states, "In addition to the personal flotation devices described under subsection (B), the operator of a watercraft that is 16 feet or more in length shall ensure the watercraft is also equipped with a U.S.C.G.-approved Type IV Personal Flotation Device: buoyant cushion, ring buoy, or horseshoe buoy." Page 38 of the Arizona Boating Law Handbook notes. "TYPE IV: Throwable Devices. These cushions and ring buoys are designed to be thrown to someone in trouble. Since a Type IV is not designed to be worn, it is neither for rough waters nor for persons who are unable to hold onto it." In the above statement, the Department recognizes Type IV PFD buoyant cushions, ring buoys, or horseshoe buoys, are not designed for rough water. The "rough water" sentence demonstrates the Department cares about river running safety. How do we get language similar to the Utah River Throw Bag language into a Commission rule?

Written Comment: May 21, 2016. Sounds like another ill-informed government official making stupid decisions. Personally won't go on a white water river without a throw rope whether it's a rule or not and I want to see participants practice with them. I don't want silly rules to cost my life.

Written Comment: May 21, 2016. I'm a boater from Flagstaff who supports the transition from requiring type IV PFDs to river throw bags. River runners are trained in swift water courses to use throw bags. Most people are unfamiliar with type IV PFDs. The most often use of them is as back rests. Please consider this transition.

Written Comment: May 21, 2016. I am an experienced river runner of 30 years including self-guided trips down the Grand Canyon. I would please ask you to consider the use of River Throw Bags in Lieu of a Type IV PFD. Having had to assist the rescue of swimmers and stranded river runners several times in rough water, a throw bag has always been essential.

Written Comment: May 21, 2016. In over 50 years of whitewater boating I have never taken a seat cushion on a river except in the Grand Canyon. On the other hand, I'm never without a throw bag. You should get rid of the stupid seat cushion regulation and substitute the throw bag.

Written Comment: June 10, 2016: Utah has already approved legislative language: "R651-215-8. River Throw Bag in Lieu of Type IV PFD. On a river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs, in lieu of the Type IV PFD requirement, a throw bag with a minimum of 40 feet of line may be carried." I can only assume that a discussion of any proposed rule change such as this would have to occur either at the staff or Commissioner level. I also assume that the Commission would have to approve any proposed language, prior to any language inclusion in legislation. Is that correct? If so, your guidance on next steps as to getting this issue proposed as an agenda item would greatly appreciated.

Written Comment: June 10, 2016. 33 C.F.R. 175.15 establishes watercraft 16 feet and over possess a Type IV Throwable Device in the form of either a buoyant cushion, ring buoy, or horseshoe buoy. R12-4-511(C) supports 33 C.F.R. 175.15 regulations, " the operator of a watercraft that is 16 feet or more in length shall ensure the watercraft is also equipped with a U.S.C.G.-approved Type IV Personal Flotation Device: buoyant cushion, ring buoy, or horseshoe buoy." River rafting on rough water is not a smooth water activity. The Grand Canyon National Park Noncommercial River Trip Regulations require the operator to provide each participant with a serviceable U.S.C.G. approved personal flotation device, Type I, III, or V; and carry one extra PFD for every 10. The U.S.C.G. establishes a Type IV PFD is "not for rough water survival." Since 2014, the Utah Department of Natural Resources (UDNR), allows the use of a throw bag, with a minimum of 40 feet of line, in lieu of a Type IV PFD on any river section where PFDs are required to be worn, or on any river section where all vessel occupants are wearing PFDs. I suggest the Department adopt language similar to UDNR.

Written Comment: July 1, 2016. I volunteer for a non-profit organization that, among other things, promotes whitewater safety. It has come to our attention that two service units of the National Park Service have different options when it comes to Type IV flotation devices. Specifically, Canyonlands National Park Noncommercial River Regulations state: “A serviceable, type IV throwable device (throw cushion) for every boat 16 feet or more in length. A commercially made throw bag with at least 40 feet of line is allowed in lieu of a type IV throwable device.” Grand Canyon National Park’s Noncommercial River Regulations state: “A throwable cushion (U.S.C.G. approved, Type IV) is required for each watercraft 16 feet in length and over.” We would like to see what is required from U.S.C.G. to allow Grand Canyon National Park to adopt the Canyonlands language, allowing a throw bag “in lieu” of a throwable cushion. U.S.C.G. response: we don’t believe there’s a role for us in this matter. Determination: After careful review we have concluded that U.S.C.G. Sector San Diego has no authority over the matter in question. Our recommendation is for River Runners for Wilderness to pursue this matter with the Parks in question and/or the National Park Service (NPS) at large. Additional insight may be available by pursuing this matter with cognizant State agencies as well. This determination is based on the following items. Item 1. After reviewing 46 Code of Federal Regulations (C.F.R.) Subchapter C (Uninspected Vessels), to include the applicability in 46 C.F.R. 25.25 (Life Preservers and Other Lifesaving Equipment), it is not apparent that the vessels of which you inquire fall under our jurisdiction or oversight. Additionally, no verbiage in 33 C.F.R. 175 (Equipment Requirements) directs the specificity you desire. Item 2: While the language does mention U.S.C.G. Type Approval, this is likely a use of the U.S.C.G. Type Approval standard, and not a reflection of U.S.C.G. regulatory requirements for the vessels in question. Item 3: We have not concluded this definitively, but believe that perhaps the reason for the different language between Canyonlands National Park and Grand Canyon National Park is their location in separate States (Utah and Arizona) which may have some effect on the allowances and wording ultimately utilized by the NPS.

Agency Response: Currently, carriage requirements are prescribed by federal regulation and each state is required to comply with 33 C.F.R. 175.15, which requires a Type IV PFD on watercraft 16 feet and longer. While there are carriage exemptions for canoes and kayaks, states are given the authority to be more stringent than federal law, but are prohibited from being more permissive than federal law. Therefore, states lack authority to allow a rope throw bag in lieu of a Type IV throwable device. The requirement to possess one device does not preclude the use of the other.

R12-4-517. Watercraft Motor and Engine Restrictions

Written Comment: July 8, 2019. Today I witnessed a person using a 40 hp motor on C.C. Cragin Reservoir. All of us kayakers had to leave the water when the person with the 40 hp motor got on the water. No one wanted to deal with its wake or noise in such a tight space. The Department should amend the rule to prohibit the use of gasoline motors, and only allow electric motors, on the Reservoir. Since the 10 hp rule is almost impossible to enforce, only allowing the use of electric motors would benefit this wonderful place. Most people observe the rule, but more and more people are violating the rule because they know it won't be enforced. I would also like to

know how to petition the Commission to set the rule process in motion.

Agency Response: The Department has confirmed reports of boats exceeding the hp restriction on CC. Cragin (Blue Ridge) Reservoir, but only a handful of them in the last 10 years. The Department believes the current engine restrictions for both gasoline and electric engines adequately address this concern and officers enforce these restrictions when required. While there are no length restrictions in place and a person may launch a vessel with a larger gasoline powered engine, the operator is restricted to a 10 hp engine to operate the vessel on the reservoir. In addition, according to an Arizona Boater Use Triennial Survey completed in 2016 by Behavior Research Center, Inc., Cragin Reservoir experienced 2,549 boater use days and approximately 7,641 person use days. Of the 2,549 Boater Use Days, a majority of those were equipped with an outboard engine. A review of 72 social media comments from persons who have used Cragin Reservoir indicated a favorable response by all raters. Of these commenters, mostly paddle craft users, all indicated no conflicts between paddle craft and motorized craft. Boating access improvements at C.C. Cragin Reservoir are funded by the State Lake Improvement fund the source of which are gasoline taxes. The fund supports improvements to launch ramps, docks, restrooms, etc.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on June 6, 2017, except as indicated below:

R12-4-510. Refunds for Renewals, the rule was amended to allow a person to obtain a refund when the watercraft was registered in error. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community. However, this amendment resulted in an increase in refund requests for persons who paid the watercraft registration fees online for weekend use and then request a refund the following week. The Department proposes to remove rule language that allows a person to simply state they paid the watercraft registration fee in error.

R12-4-530. Third-party Providers; Agents, the Department did not anticipate the high employee turnover rate for third party providers would be as high as it is. This has resulted in the Department expending resources greater than anticipated.

The Department is redesigning the Watercraft Registration database and believes the new system will help reduce the transaction error rate and eliminate some of the after-hours assistance now provided by the Department. The Department is considering allowing certain third-party agents greater administrative authority to correct entry errors in the new system. The high employee turnover rate will continue to represent a training issue for the Department.

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:

Fee related amendments were accomplished through exempt rulemaking:

- Permission to pursue exempt rulemaking granted: July 7, 2016
- Notice of Proposed Exempt Rulemaking approved by Commission: February 3, 2017
- Notice of Proposed Exempt Rulemaking Public Comment Period: February 3, 2017 through March 5, 2017
- Notice of Final Exempt Rulemaking approved by Commission: April 7, 2017
- Notice of Final Exempt Rulemaking: 23 A.A.R. 1034, May 5, 2017

Amendments were accomplished through regular rulemaking:

- Permission to pursue rulemaking granted: July 7, 2016
- Notice of Rulemaking Docket Opening: 23 A.A.R. 299, February 3, 2017
- Notice of Proposed Rulemaking: 23 A.A.R. 299, February 3, 2017
- Public Comment Period: February 3, 2017 through March 5, 2017
- G.R.R.C. approved the Notice of Final Rulemaking at the June 6, 2017 Council Meeting
- Notice of Final Rulemaking: 23 A.A.R. 1732, June 30, 2017

The Department did not indicate a course of action in the previous five-year review report for the following rules:

R12-4-508. New Watercraft Exchanges

R12-4-512. Fire Extinguishers Required for Watercraft

R12-4-516. Watercraft Sound Level Restriction

R12-4-518. Regattas

R12-4-519. Reciprocity

R12-4-520. Arizona Uniform State Waterway Marking System

R12-4-523. Controlled Operation of Watercraft

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation

R12-4-528. Watercraft Checkpoints

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.

A.A.C. Title 12, Chapter 4, Article 5. Boating and Water Sports contains 28 rules relating to watercraft registration, regulation, and safe usage. The rules detail the licensure requirements, safety requirements, and standards for use of watercraft under the authority of the Department. These rules promote public safety on Arizona waterways by establishing basic boating safety rules and laws protect the recreational public. The rules also specify the process for watercraft registration renewals, registrations, and refunds associated with renewal of registration. The economic impact of the rules is minimal for most boat owners and operators. Most of the economic impact results from the cost of safety equipment (fire extinguishers and personal flotation devices) and registration, required under U.S.C.G. regulations and state laws.

Except as indicated below, the Department believes the rules impose the least burdens and costs to persons regulated by the rules.

R12-4-502. Application for Watercraft Registration, subsection (F) of the rule requires an applicant for watercraft registration to submit one or more additional forms of documentation necessary to identify the specific watercraft by way of a unique identifier (typically a HIN) and establish ownership. Acceptable documents include a letter of deletion, which is required when the watercraft was previously documented by the U.S.C.G. and the owner is now applying for registration in Arizona. Under 46 CFR § 67.171, the owner of a watercraft that was previously documented by U.S.C.G. must submit the Certificate of Documentation, form CG-1270, when the owner no longer elects to document the watercraft. The National Vessel Documentation Center (NVDC) is experiencing delays in the time necessary to issue letters of deletion due to performance issues associated with its Information Technology (IT) System. This delay has resulted in the applicant's inability to provide documentation required to register the watercraft in Arizona. In an effort to provide better customer service, after reviewing applicable statutes and rules and consulting with U.S.C.G., the Department proposes to amend the rule to allow an applicant to submit the form CG-1270 or Statement of Facts form when the watercraft was documented by U.S.C.G. immediately preceding application for watercraft registration in Arizona.

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 following rules are based on state law and federal law is not directly applicable to the rule:

R12-4-503. Renewal of Watercraft Registration

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-508. New Watercraft Exchanges

R12-4-509. Watercraft Agents

R12-4-510. Refunds for Renewals

R12-4-515. Display of Numbers and Decals

R12-4-517. Watercraft Motor and Engine Restrictions

R12-4-518. Regattas

R12-4-524. Water Skiing

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation

R12-4-526. Unlawful Mooring

R12-4-527. Transfer of Ownership of a Towed Watercraft

R12-4-528. Watercraft Checkpoints

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

R12-4-530. Third-party Providers; Agents

The Department has determined the following rules are not more stringent than their corresponding federal law(s):

R12-4-501. Boating and Water Sports Definitions, federal regulation 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187.303 establishes the terms a state must define in order to participate in the Vessel Identification System (VIS); these terms are defined under A.R.S. § 5-301 and R12-4-501.

R12-4-502. Application for Watercraft Registration. 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in VIS. In addition, federal regulation 33 C.F.R. 174 is applicable to the subject of the rule. 33 C.F.R. 174 prescribes a standard numbering system for vessels applicable to States for approval of State numbering systems.

R12-4-505. Hull Identification Numbers. 33 C.F.R. 181 and 33 C.F.R. 187 are applicable to the subject of the rule. 33 C.F.R. 181 prescribes requirements for the certification of boats and associated equipment and identification of boats to which 46 U.S.C. applies and 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in the Vessel Identification System (VIS).

R12-4-506. Invalidation of Watercraft Registration. 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.77 establishes that a certificate of number becomes invalid if the application contains false information or fees for the issuance of the certificate of number are not paid. A certificate of number is also invalid 60 days after the day the watercraft is no longer principally operated in the State where the certificate of number was issued or the person whose name appears on the certificate of number involuntarily loses their interest in the numbered watercraft by legal process.

R12-4-512. Fire Extinguishers Required for Watercraft. 46 C.F.R. Part 25 is applicable to the subject of the rule. 46 C.F.R. Part 25 prescribes fire extinguisher classifications, the number and type of fire extinguishers required for specific vessels, locations for storage, inspection, and condition requirements.

R12-4-514. Liveries. 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.21 establishes that no person may use a vessel subject to numbering requirements unless it has a number issued on a certificate of

number by the issuing authority in the State of principal operation and the number is displayed on the vessel or, if leased or rented for noncommercial operation, a copy of the lease or rental agreement containing the vessel number that appears on the certificate of number and the period of time for which the vessel is leased or rented.

R12-4-515. Display of Numbers and Decals. 33 C.F.R. 173 and 33 C.F.R. 174 are applicable to the subject of the rule. 33 C.F.R. 173 prescribes requirements for numbering vessels and 33 C.F.R. 174 prescribes a standard numbering system for vessels.

R12-4-516. Watercraft Sound Level Restriction 42 U.S.C. 65 is applicable to the subject of the rule. 42 U.S.C. 65 establishes federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment. The Department has determined the rule is not more stringent than the corresponding federal law.

R12-4-519. Reciprocity. 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173 establishes a vessel numbered in a State is deemed in compliance with the numbering system when operated temporarily in another state; and a person moving to another state may operate their vessel with the other state's number for up to sixty days in the new state.

R12-4-520. Arizona Uniform State Waterway Marking System. 33 C.F.R. 62 is applicable to the subject of the rule. 33 C.F.R. establishes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the U.S.C.G. in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation.

The Department has determined the following rules are more stringent than their corresponding federal laws:

R12-4-511. Personal Floatation Devices. 33 C.F.R. 175 is applicable to the subject of the rule. 33 C.F.R. 175 establishes federal PFD regulations apply to all recreational vessels propelled or controlled by machinery, sails, oars, paddles, poles, or other vessels, to include defining "personal flotation device" and "PFD" prescribing the circumstances under which a PFD is required, specifications for size, fit, access, and serviceable condition. 33 C.F.R. 175.13(c) states, "No person may operate a recreational vessel under way with any child under 13 years old aboard unless each such child is either wearing an appropriate PFD approved by the U.S.C.G. or is below decks or in an enclosed cabin." The Department has determined the rule is more stringent than the corresponding federal law in requiring a child who is on board a watercraft and is twelve years of age or under to wear a PFD whenever the watercraft is underway. However, A.R.S. § 5-331 (C) provides statutory authority to exceed the requirements of federal law and states, "A child twelve years of age or under on board a watercraft shall wear a U.S.C.G. approved wearable personal flotation device whenever the watercraft is underway."

R12-4-513. Watercraft Accident and Casualty Reports. 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.55 establishes the operator of a vessel shall submit the casualty or accident report prescribed in §

173.57 to the reporting authority prescribed in § 173.59 when, as a result of an occurrence that involves the vessel or its equipment damage to vessels and other property totals \$2,000 or ..." The Department has determined the rule is more stringent than the corresponding federal law. However, A.R.S. § 5-349(C) provides statutory authority to exceed the requirements of federal law and states, "For every other collision, accident or other casualty involving property damage exceeding five hundred dollars, a report shall be submitted within five days after the incident by the operator or owner of the watercraft involved."

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 following rules require the issuance of a "general permit" as defined under A.R.S. § 41-1001(11) and are in compliance with A.R.S. § 41-1037:

R12-4-502. Application for Watercraft Registration

R12-4-503. Renewal of Watercraft Registration

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-509. Watercraft Agents

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

R12-4-530. Third-party Providers; Agents

R12-4-527. Transfer of Ownership of a Towed Watercraft

The following rules do not require the issuance of a regulatory permit, license, or agency authorization:

R12-4-501. Boating and Water Sports Definitions

R12-4-505. Hull Identification Numbers

R12-4-506. Invalidation of Watercraft Registration

R12-4-508. New Watercraft Exchanges

R12-4-510. Refunds for Renewals

R12-4-511. Personal Floatation Devices

R12-4-512. Fire Extinguishers Required for Watercraft

R12-4-513. Watercraft Accident and Casualty Reports

R12-4-514. Liveries

R12-4-515. Display of Numbers and Decals

R12-4-516. Watercraft Sound Level Restriction

R12-4-517. Watercraft Motor and Engine Restrictions

R12-4-518. Regattas

R12-4-519. Reciprocity

R12-4-520. Arizona Uniform State Waterway Marking System

R12-4-523. Controlled Operation of Watercraft

R12-4-524. Water Skiing

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation

R12-4-526. Unlawful Mooring

R12-4-528. Watercraft Checkpoints

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.

The Department proposes no action for the following rules:

R12-4-503. Renewal of Watercraft Registration

R12-4-505. Hull Identification Numbers

R12-4-506. Invalidation of Watercraft Registration

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-508. New Watercraft Exchanges

R12-4-509. Watercraft Agents

R12-4-511. Personal Floatation Devices

R12-4-512. Fire Extinguishers Required for Watercraft

R12-4-513. Watercraft Accident and Casualty Reports

R12-4-514. Liveries

R12-4-515. Display of Numbers and Decals

R12-4-516. Watercraft Sound Level Restriction

R12-4-517. Watercraft Motor and Engine Restrictions

R12-4-519. Reciprocity

R12-4-520. Arizona Uniform State Waterway Marking System

R12-4-523. Controlled Operation of Watercraft

R12-4-524. Water Skiing

R12-4-525. Watercraft Certificate of Number, Numbers, and Decal Revocation

R12-4-526. Unlawful Mooring

R12-4-527. Transfer of Ownership of a Towed Watercraft

R12-4-528. Watercraft Checkpoints

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

R12-4-530. Third-party Providers; Agents

The Department proposes to amend the following rules as indicated in this report:

R12-4-501. Boating and Water Sports Definitions

R12-4-502. Application for Watercraft Registration

12 A.A.C. 4, Article 5, Five-year Review Report Continued.

R12-4-504. Watercraft Registration; Fees; Penalty for Late Registration; Staggered Registration Schedule

R12-4-510. Refunds for Renewals

R12-4-518. Regattas

The Department anticipates requesting an exception to the rulemaking moratorium by August 2021 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by September 2022, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 5. BOATING AND WATERSPORTS

**R12-4-501, R12-4-502, R12-4-503, R12-4-504, R12-4-506, R12-4-507, R12-4-509, R12-4-510,
R12-4-511, R12-4-513, R12-4-514, R12-4-515, R12-4-516, R12-4-517, R12-4-520, R12-4-521,
R12-4-522, R12-4-524, R12-4-526, R12-4-527, R12-4-529, AND R12-4-530**

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rule making.

R12-4-501. Boating and Water Sports 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 used throughout Article 5. The Commission proposes to amend the definition of "abandoned watercraft" to establish that a watercraft remaining unattended in a designated mooring or anchorage area is not considered an "abandoned watercraft" to make the rule more concise. With this rulemaking, the Department is establishing a third-party provider program that will allow a person to provide certain watercraft services to the public; the Commission proposes to define "third-party provider" to facilitate consistent interpretation of, and to prevent the regulated community from misinterpreting the intent of, the proposed third-party provider rule. Under A.R.S. § 5-326, a nonresident owner of a watercraft must pay a nonresident boating safety infrastructure fee. Initially, the Commission authorized different options as proof of payment of the fee, including a separate decal to be affixed to the watercraft. However, since the rule was adopted, the Department has determined the most cost effective and efficient option is to use the certificate of number or the registration decal as the means to indicate proof of payment. The Commission proposes to amend the rule to repeal the definition of the "Nonresident Boating Safety Infrastructure decal." In 2014, 33 C.F.R. 175 was amended to define "wearable" and "throwable" Personal Flotation Devices (PFDs). The Commission also proposes to amend the definition of "personal flotation device" and define "wearable" and "throwable" PFDs in order to maintain consistency between the rule and the corresponding federal regulation, as required under A.R.S. § 5-311. In addition, the Commission proposes to amend the definition of "livery" to facilitate consistent interpretation of the Commission rules.

R12-4-502. Application for Watercraft Registration

The objective of the rule is to establish watercraft registration application requirements to ensure the Department collects and maintains the information required under 33 C.F.R. 187 Vessel Identification System (VIS) and 33 C.F.R. 174 State Numbering and Casualty Reporting Systems. These regulations prescribe the owner and vessel information requirements for States electing to participate in VIS. The Commission proposes to establish signature requirements for watercraft owned by more than one person, a business, or held in a trust to reflect the Department's current business processes and ensure compliance

with A.R.S. § 5-321(A) which states, "the application shall be signed by the owner of the motorized watercraft...". The Commission proposes to require an applicant for a watercraft registration to complete and sign a residency statement to ensure compliance with A.R.S. § 5-301(13), which establishes residency standards. The Commission proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference the Department's website to ensure the rule remains concise in the event the Department's url should change. The Commission proposes to require the owner's signature on the release of interest to be acknowledged before a notary public or witnessed by a Department employee when a person is registering a watercraft in Arizona for the first time, is not listed as the owner on the current registration, and the signature of the buyer or seller is in question. This typically occurs when the release of interest contains a printed signature or the signature on another document submitted along with the release of interest does not match the person's signature on the release of interest. The Commission proposes to require the owner to present their watercraft for inspection when the applicant is unable to provide required information. The Department is aware of instances where a watercraft bearing a watercraft dealer certificate of number is used for personal recreational purposes by employees or family members of the dealership, in violation of A.R.S. §§ 5-321(A) and 5-322(F). The Commission also proposes to establish a watercraft dealer registration may become invalid when used in violation of A.R.S. § 5-322(F), as authorized under R12-4-506. In addition, the Commission proposes to amend the rule to reference the letter of deletion issued by the U.S. Coast Guard. The U.S. Coast Guard documents watercraft that are owned by a U.S. citizen, are in excess of five net tons, and are operated on the navigable waters of the U.S. or in the fisheries in the U.S. Exclusive Economic Zone (EEZ). The EEZ extends no more than 200 nautical miles from the territorial sea baseline and is adjacent to the 12 nautical mile territorial sea of the U.S., including the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Because the states are only able to register undocumented watercraft, a letter of deletion (proof the watercraft is no longer documented by the U.S. Coast Guard) is required.

R12-4-503. Renewal of Watercraft Registration

The objective of the rule is to establish watercraft registration renewal requirements when the renewal is made in person, through the mail, or online. Laws 2013, 1st Regular Session, Ch. 197, Section 25 (Senate Bill 1223) amended A.R.S. §§ 5-321 and 5-322 to authorize the Commission to establish watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees. The Commission proposes to replace references to the statutory fee authority with the rule that establishes watercraft fees, R12-4-504. In addition, the Commission proposes to allow a person to obtain a duplicate registration online via the Department's online watercraft registration system. Currently, a person may only obtain a duplicate watercraft registration by mail or in person at a Department office. As a result, a person who discovers they have misplaced their registration on a weekend or holiday is not able to obtain a duplicate watercraft registration any sooner than the next business day. This change is in response to customer comments received by the Department.

R12-4-504. Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule

The objective of the rule is to establish motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, penalty for late registration, and a staggered watercraft registration schedule. The Commission proposes to specify the number of months of proration to clarify the current watercraft registration process for the first renewal period to make the rule more concise. In addition, the Commission proposes to allow a person to renew their watercraft registration up to six months before the current registration expiration date. This change is in response to customer comments received by the Department.

R12-4-505. Hull Identification Numbers

The objective of the rule is to establish Hull Identification Number (HIN) requirements in compliance with 33 C.F.R. 181. The Commission proposes to allow the Department to accept a bill of sale with a missing or nonconforming HIN to make the rule more concise and reduce costs to persons regulated by the rule. Such scenarios include a homemade watercraft or a watercraft manufactured prior to November 1, 1972.

R12-4-506. Invalidation of Watercraft Registration and Decals

The objective of the rule is to establish the circumstances under which the Department may invalidate a watercraft registration and provide the Department with the authority to refuse to register a watercraft until the reason for the invalidity is corrected or no longer exists. With this rulemaking, the Department is establishing a third-party provider program that will allow a person to provide certain watercraft services to the public; the Commission proposes to amend the rule to allow the Department to invalidate the watercraft registration erroneously issued by a third-party provider (agent). Under A.R.S. § 5-321(F), no person may operate a motorized watercraft on the waterways of this state unless the watercraft displays the assigned number and current annual decals or the person is in possession of a valid thirty-day temporary registration as prescribed by this article. Under A.R.S. § 5-322(F), each dealer or manufacturer in this state engaged in the sale of motorized watercraft using the watercraft for a sales demonstration shall obtain one or more dealer watercraft certificates of number with the current validating decals. A watercraft dealer certificate of number (registration) allows the watercraft dealer to demonstrate a watercraft's features to a potential buyer. The Department is aware of instances where the watercraft is being used by an employee or family member of the dealership for personal recreation and not for demonstration purposes. This act facilitates the unlawful use of an unregistered watercraft on the waterways of the state and circumvents paying the proper watercraft registration fee as required under A.R.S. § 5-321. The Commission proposes to amend the rule to establish the Department shall invalidate the dealer watercraft registration when the watercraft dealer registration is used contrary to law.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

The objective of the rule is to establish requirements for transferring ownership of an unreleased or abandoned watercraft. Under R12-4-501, "abandoned watercraft" includes any watercraft that has remained on private property without the consent of the private property owner. An "unreleased watercraft" is a watercraft for which there is no written release of interest from the registered owner. Currently, only the

property owner may submit an abandoned watercraft application. When a watercraft is abandoned on foreclosed real property, the financial institution often contracts with a company for the removal of any personal effects left on the foreclosed property (including watercraft). The Commission proposes to amend the rule to allow an agent to act on behalf of the lienholder when a watercraft is abandoned on foreclosed real property to reduce costs and burdens to persons regulated by the rule. This change is in response to customer comments received by the Department. The Commission also proposes to amend the rule to authorize the Department to notify the public of a person's intent to obtain ownership of an abandoned watercraft. Currently, when the Department is unable to notify the owner of a person's intent to obtain a transfer for an abandoned watercraft, the Department publishes a notice once in a newspaper or other publication of general circulation in this state; which costs the Department approximately \$1,800. This change will result in a more efficient and less costly process for the Department. Also, more and more people are using electronic media instead of subscribing to newspaper services; it is reasonable to provide this notice on the Department's website where it will be available to a larger group of people. In addition, the Commission proposes to amend the rule to remove the requirement that the Department will provide a description of the abandoned or unreleased watercraft subject to the transfer of ownership. The Department has never received a request for this information from any person whose watercraft was abandoned or stolen; the Department believes this requirement is obsolete and should be removed from the rule.

R12-4-509. Watercraft Agents

The objective of the rule is to establish watercraft agent application requirements and the authorization process for a dealer seeking to issue a 30-day temporary certificate of number upon the sale of a new watercraft. The Commission proposes to reference the rule that establishes the dealer certificate of number fee to increase consistency between Commission rules. The Commission proposes to replace references to "watercraft dealer" with "watercraft agent" to make the rule more concise. The Commission proposes to allow a watercraft agent to issue a temporary certificate of number for a used watercraft. This change is in response to customer comments received by the Department. The Commission proposes to remove the list of information required on the application and require the application submitted by the watercraft agent to comply with the requirements of R12-4-502 to make the rule more concise. The Department is in the process of creating an online system that will allow a watercraft agent to log-in, issue temporary certificates of number, and access their watercraft agent account. As a result of the online system, the Department will no longer supply prenumbered temporary certificates of number to watercraft agents. In addition, a watercraft agent will no longer be required to verify receipt of prenumbered temporary certificates of number, submit voided prenumbered temporary certificates of number, or submit a monthly report for activities conducted during the previous month. The Commission also proposes to increase the amount of time in which a watercraft agent must submit documentation from 72 hours to five business days. This change is in response to customer comments received by the Department. In addition, the Commission proposes to amend the rule to comply with changes made to U.S. Coast Guard regulations under 33 C.F.R. 187 Vessel Identification System (VIS), as required under A.R.S. § 5-311.

R12-4-510. Refund of Fees Paid in Error

The objective of the rule is to establish requirements necessary to obtain a refund for watercraft registration renewal and Nonresident Boating Safety Infrastructure fees, as applicable. Under the current rule, the Department may refund registration fees when a watercraft owner erroneously paid fees twice for the same watercraft or sold the watercraft to another person prior to renewing the registration. At the January 15, 2016 Commission meeting, a watercraft owner petitioned the Commission for a refund of her registration fee for a watercraft she did not intend to register. The Commission denied the petition as the rule did not allow for a refund under the petitioner's circumstance, but directed the Department to evaluate the petitioner's request during the rulemaking process for Article 5. The Commission proposes to allow for a refund under this circumstance. With this rulemaking, the Department is establishing a third-party provider program that will allow a person to provide certain watercraft services to the public; the Commission proposes to amend the rule to establish that a person who paid their watercraft registration fee to a third-party provider must request a refund from that third-party provider.

R12-4-511. Personal Flotation Devices

The objective of the rule is to establish personal flotation device (PFD) category and type requirements specific to the operator, each passenger, and watercraft type. Compliance with PFD laws and rules is important because, according to the U.S. Coast Guard, drowning was the reported cause of death in 78% of the 610 recreational boating fatalities in 2014 nationwide. Of those incidents, 84% of those drowning victims were not wearing a PFD. In 2014, 33 C.F.R. 175 was amended to define "wearable" and "throwable" PFDs. A throwable PFD means a U.S. Coast Guard approved Type IV device such as, but not limited to, a buoyant cushion, ring buoy, or horseshoe buoy. A wearable PFD means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid. The Commission proposes to amend the rule to reflect changes made to U.S. Coast Guard regulation, as required under A.R.S. § 5-311.

R12-4-513. Watercraft Accident and Casualty Reports

The objective of the rule is to establish self-reporting requirements for watercraft operators involved in any collision, accident, or other casualty resulting in an injury, casualty, or property damage. The Commission proposes to replace references to "accident" with "incident" to reflect the current terminology used in the boating industry. In addition, the Commission proposes to remove the list of information required on the report and require the owner or operator of the watercraft submitting the report to comply with the requirements of 33 C.F.R. 173.57 to make the rule more concise.

R12-4-514. Liveries

The objective of this rule is also to establish identification requirements for rental watercraft when the certificate of number is retained on shore by the owner. The U.S. Coast Guard regulations address commercial, passenger for hire operations in which a livery offers a watercraft with an operator for hire or lease operations. Persons renting personally owned watercraft for compensation circumvent livery and

business regulatory requirements and place the public at risk by using uninspected safety equipment. The Department has received complaints from Maricopa County Parks and Maricopa County Sheriff's Office enforcement officers regarding persons who are operating rented or leased watercraft; some were observed to have multiple safety violations. A.R.S. § 5-371 prohibits the owner, employee, or agent of a boat from renting or leasing watercraft registered as a livery that do not have the equipment (e.g. personal flotation devices, fire extinguishers, lights, flame arrestors, etc.). The avoidance of regulation and accountability is cause for public concern. More recently, multiple fatalities along the Colorado River involving the rental of personal watercraft has peaked public and media interest regarding current regulatory mechanisms of livery watercraft. The Commission proposes to amend the rule to require a person who rents, leases, or offers a watercraft or who operates a passenger for hire situation to register the watercraft as a livery. The Commission proposes to amend the rule to require a person who rents, leases, or offers a watercraft or who operates a passenger for hire situation to display a placard or some other form of display with the name and phone number of the business and carry the registration or receipt onboard the watercraft when operating a livery watercraft on waterways within the state. Identifying livery craft by name and phone number has been a practice employed by the larger livery companies and is a benefit to both the livery operation and persons renting when disabled or damaged craft are contacted by law enforcement and the lessee doesn't know the name of the rental company, contact number or where the business is located; this proposal protects the livery operator's fleet property by allowing recovery or identification of livery craft involved in reckless operation. Most watercraft rental businesses already identify their watercraft as rentals; this aids law enforcement with watercraft recovery and search and rescue operations. It is also a form of advertisement, which can be beneficial to any business.

R12-4-515. Display of AZ Numbers and Registration Decals

The objective of the rule is to establish requirements for the display of watercraft numbers and registration decals issued by the Department. Under A.R.S. § 5-322(A), all motorized watercraft whether underway, moored, or anchored on the waters within the boundaries of the state are to be numbered in accordance with A.R.S. Title 5, Chapter 3 or rules of the Commission in accordance with the federally approved numbering system. The Commission proposes to amend the rule to reference "moored" and "anchored" watercraft to increase consistency between statute and rule.

R12-4-517. Watercraft Motor and Engine Restrictions

The objective of the rule is to establish watercraft motor and engine restrictions to protect the public and conserve aquatic resources. The rule was adopted to restrict the use of watercraft and boat engines on certain bodies of water in order to protect the public health and safety and the environment. This is necessary because the lakes listed under subsection (A) are used as a source of drinking water for local communities and lakes listed under subsection (B) are small or have habitat for nesting wildlife. In the past, watercraft powered by electric motors were typically smaller than their gas-powered counterparts due to their short battery life and output. Advances in electric motor and composition of watercraft have greatly improved battery life and output, resulting in the manufacture of larger watercraft with electric motors. The

Commission proposes to amend the rule to establish a ten horsepower (hp) limit for watercraft with electric motors for listed lakes.

R12-4-520. Arizona Uniform State Waterway Marking System

The objective of the rule is to incorporate the U.S. Coast Guard's uniform state waterway marking system. The Commission proposes to amend the title to reflect the current terminology used in the boating industry to make the rule more concise. The Commission proposes to incorporate by reference the most recent version of 33 C.F.R. 62 to ensure compliance with A.R.S. § 5-311, which requires the Commission to adopt rules for uniform navigational marking standards of waters. The Commission also proposes to amend the rule to combine R12-4-520, R12-4-521, and R12-4-522 into one overarching rule that addresses regulatory markers and aids to navigation. As a result, R12-4-521, and R12-4-522 will be repealed. In addition, the Commission proposes to prohibit the use of lights to mark waterways or shorelines without Department authorization, federal regulation 33 C.F.R. 62 also addresses the use of lights. For example, at night, a green light placed on a dock gives the impression that a watercraft is being operated in the area. This presents a safety hazard to persons operating another watercraft in the immediate vicinity. The amendment would allow the Department to require the person responsible for the light to either relocate or change the color of the light. Under A.R.S. § 5-361(A), "No city, county or person shall mark the waters of this state in any manner in conflict with the uniform navigational marking standards of waters as prescribed by the commission or the United States coast guard."

R12-4-521. Placing or Tampering with Regulatory Markers or Aids to Navigation

The objective of the rule is to establish prohibited activities involving regulatory markers, aids to navigation, or other waterway marking devices. The Commission proposes to amend R12-4-520 to combine the requirements of R12-4-520, R12-4-521, and R12-4-522 into one overarching rule that addresses regulatory markers and aids to navigation and repeal R12-4-521.

R12-4-522. Establishment of Controlled-Use Markers

The objective of the rule is to establish requirements for persons requesting to establish, change, or remove controlled-use markers and the follow-up reporting requirements. The Commission proposes to amend R12-4-520 to combine the requirements of R12-4-520, R12-4-521, and R12-4-522 into one overarching rule that addresses regulatory markers and aids to navigation and repeal R12-4-522.

R12-4-524. Water Skiing

The objective of the rule is to establish water ski observer requirements. The responsibilities of an observer include watching for hazards, observing water skiers, notifying boat operators when a skier has entered the water, and determining approximate points of entry in the water. Since the rule was adopted, the variety of towed water sport activities has grown immensely and includes a wide range of devices. The Commission proposes to amend the rule title to clarify that the rule applies to all persons participating in a towed water sport, not just water skiing. The Commission proposes to amend the rule to reflect observer requirements mandated under A.R.S. § 5-346 to increase consistency between statute and rule. In recent years a risky new fad, "teak surfing," also called "drag surfing" has emerged in boat-towed sports. Teak surfing is performed

by hanging onto a swim platform at the back of a boat while the boat is moving forward in slow motion. Often the teak surfer will release their grip and body surf in the boat's wake. The obvious danger is the teak surfer's proximity to the boat propeller. The silent danger is exposure to carbon monoxide, which is tasteless and odorless, and potentially lethal when inhaled. According to the Naval Safety Center, the symptoms of carbon monoxide poisoning may include severe headache, dizziness, confusion, nausea, fainting, and death. Low levels can cause shortness of breath, mild nausea, and a mild headache. Low levels are more dangerous in the boating environment because they can lead to drowning because teak surfers rarely wear life preservers because they inhibit body surfing. Carbon-monoxide poisoning may not be suspected immediately because the symptoms are similar to those of people with the flu, food poisoning, or other illnesses. The Commission proposes to ban "teak surfing." "Wake surfing" is another risky fad; in this variation of waterskiing, surfers are pulled behind a watercraft by a towrope and, once a surf wave is created, the wake surfer releases the rope and "surfs" the wave created by the watercraft. The Commission believes wake surfers are exposed to the same risks as water skiers and should be subject to the same safety requirements. The Commission also proposes to require the operator of a watercraft to ensure an observer is on duty at all times a person is being towed behind the watercraft or is surfing a wake created by the watercraft. In addition, the Commission proposes to require a wake surfer to wear a PFD.

R12-4-526. Unlawful Mooring

The objective of the rule is to establish watercraft mooring restrictions, prohibitions, and exceptions. Both Department officers and the Lake Havasu Police Department have requested the Commission amend the rule to enable law enforcement to take action quickly when a watercraft is abandoned, submerged or is sinking. Watercraft abandoned in public waterways are a major problem as they create navigation and environmental hazards. Consider the pollution that comes from one abandoned boat that sinks; it releases oil, fuel, antifreeze and the many synthetic (often toxic) materials the boat itself is made of. Not only do these harmful substances destroy fish habitat and community drinking water, the blight and dangers that come from sunken boats put boaters at greater safety risks. The Commission proposes to require a person to remove abandoned or submerged watercraft within 72 hours of written or verbal notification and establish the owner of the watercraft is responsible for all towing and storage fees resulting from the removal of the watercraft from waters. These changes are in response to comments received by the Department.

R12-4-527. Transfer of Ownership of a Towed Watercraft

The objective of the rule is to establish transfer of ownership requirements for a watercraft in possession of a towing company and ensure compliance with A.R.S. §§ 5-399 - 5-399.02, which prescribes the process that allows a towing company to take ownership of a watercraft they towed and impounded and is left unclaimed. A.R.S. § 5-399(A) requires a towing company to provide written notification by mail to the owner and lienholder, if known, of the impounded watercraft's location. Because statute does not establish a time-frame for this notification, the towing company is not obligated to notify the owner/lienholder of the impounded watercraft's location in a timely manner, resulting in the accrual of additional impound fees. In addition, the Department is aware of scenarios where a towing company will wait until they have a buyer for

a watercraft before applying for a certificate of number for that watercraft. This practice results in the accrual of additional impound fees and, by the time the towing company notifies the owner/lienholder, the fees have become so great that the owner/lienholder opts to give the watercraft to the towing company in lieu of paying those exorbitant impound fees. The Commission proposes to amend the rule to require a towing company to submit a request for the owner/lienholder information from the Department within 15 days of impounding the watercraft, and to thereafter notify the owner and lienholder of an impounded watercraft's location within 15 days of receiving the information from the Department. These time-frame mirror the statutory period of time in which the towing company must wait before submitting a request to obtain ownership of a watercraft; as prescribed under A.R.S. § 5-399(B), if the watercraft's owner or lienholder does not remove the watercraft within 15 days of the mailing of notice, the towing company shall submit an application for ownership of the abandoned watercraft. These amendments are authorized under A.R.S. § 5-399.03 which states, "The department may adopt rules to carry out the requirements of this article and establish fees to implement this article." In addition, the Commission proposes to remove the reference to the Director to make the rule more concise because it is the Department's watercraft program that will process the towing company's application.

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

The objective of the rule is to establish the nonresident boating safety infrastructure fee (NBSIF) schedule (based on the length of the watercraft) and the manner in which a nonresident recreational watercraft owner may provide acceptable proof of payment of the fee. Under A.R.S. § 5-326, the Commission shall prescribe the manner in which a person shall carry and display proof of payment of the required fee. Initially, the Commission authorized different options as proof of payment of the fee. However, since the rule was adopted, the Department has determined the most cost effective and efficient option is to use the registration decal as a means to indicate proof of payment. The Commission proposes to remove references and requirements that relate to the Arizona NBSIF Decal.

R12-4-530. Authorized Third-party Providers; Agents

With this rulemaking, the Department is establishing a third-party provider program. The proposed rule allows the Department to enter into a contract, through the State procurement process, with a private entity to perform limited or specific services on behalf of the Department. The proposed rule authorizes a third party vendor to process the less complex watercraft transactions: watercraft transfers, watercraft registration renewals, duplicate watercraft registrations and decals, and new watercraft registrations. The proposed rule establishes the Department shall determine minimum quality standards of service and a quality assurance program designed to ensure the authorized third-party provider is complying with established standards. The proposed rule requires a third-party provider to collect and remit the State's fees to the Department and authorizes the third-party provider to collect and retain a reasonable and commensurate fee for its services. The proposed rule requires a third-party provider to identify to the applicant the Department's registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs. The proposed rule allows the Department to suspend or cancel an authorization/certification when it

determines an authorized third-party provider made a material misrepresentation or misstatement in the application for authorization or certification, has been convicted of fraud or a watercraft related felony in any state or jurisdiction of the U.S. within the ten years immediately preceding the date a criminal records check is complete, or any other felony within the five years immediately preceding the date a criminal records check is complete, violated a rule or policy adopted by the Department, failed to keep and maintain required records, failed to remit to the Department the State's fees, or allowed an unauthorized person to engage in any business pursuant to this Section. The proposed rule allows the Department to order a summary suspension of the third provider's authorization if the Department has reasonable grounds to believe that a certificate holder or other person employed by an authorized third-party provider has committed watercraft registration fraud, improperly disclosed a watercraft owner's personal information, committed bribery or theft. In addition, the proposed rule establishes a third-party or certificate holder may appeal the decision pursuant to A.R.S. Title 41, Chapter 6, Article 10. This rule is proposed in response to customer comments received by the Department.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have a significant impact on the regulated community.

In recent years this risky new fad, known as "teak surfing" or "drag surfing" has emerged in boat-towed sports. Teak surfers" hang off the swim platform and when the wake gets large enough, they release their hold and body surf on the wake. Surfers forego life vests because they interfere with the ability to surf the wake. Many boaters think teak surfing is safe, because the propellers are located under the middle of the boat, a significant distance from the rear swim deck. But this pastime exposes "surfers" to dangerous levels of carbon monoxide. Swim decks, which often are weighted to sink them lower in the water and create bigger wakes, are located where deadly exhaust fumes accumulate. As a person teak surfs, the wind creates an eddy effect, causing the carbon monoxide gases to circulate in a clockwise rotation into the rear of the watercraft where it accumulates. The surfer's head is inside a "burble," a spot where the air stream behind the boat breaks up and carbon monoxide accumulates in a pocket. Victims can be overcome by carbon monoxide in a matter of minutes and even when monitored by other persons can slip under water and drown. In 2001, prompted by the death of an 18-year old teak surfer on Lake Powell, the National Institute for Occupational Safety and Health released its first nationwide warning about the activity and began conducting a study of the carbon monoxide poisoning hazard related to ski boats.

Watercraft that are in poor condition or sometimes incapable of navigation are used as "party" platforms where persons use them as overnight floating "crash pads" or docking stations where multiple boats tie off and congregate. In some cases, persons resort to living on a boat (squatting), but do not properly maintain it so problems arise with safety and pollution. These watercraft are an eyesore and

often result in an ecological and/or physical hazard as they leak fuel and/or excrement into public waterways and impact the recreating public by interfering with boating access and permanently taking space intended to be shared by the public.

Tow companies are not held responsible for compliance with statutory requirements; they are not timely in obtaining a watercraft record for towed watercraft, notifying the owner of the watercraft of the location where the watercraft is impounded. On an annual basis, the Department transfers approximately 30 watercraft to towing companies under this rule.

(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.

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have a significant impact on the regulated community. For all rules identified in (A)(1)(b), the Commission believes the targeted conduct identified below will continue to occur if the rule is not amended as identified in (A)(1):

Carbon monoxide levels measured on recreational watercraft indicate that carbon monoxide exposures as high as 26,700 ppm could be experienced during “teak surfing” on watercraft platforms. According to the Occupational Safety and Health Administration, exposure to 3,200 ppm can cause headaches, nausea, and dizziness after five to ten minutes; collapse and loss of consciousness after 30 minutes; exposure to 6,400 ppm can cause headaches and dizziness after one to two minutes; loss of consciousness and danger of death after 10 to 15 minutes; and exposure to 12,800 ppm can cause immediate physiological effects, loss of consciousness, and danger of death after one to three minutes of exposure. A 2014 report issued by Safety Research and Strategies found a popular activity known as “teak surfing” or “dragging,” in which occupants hold onto the swim deck as the boat pulls them through the water, has claimed the lives of at least 11 and injured another 10. However, the National Institute for Occupational Safety and Health and the U.S. Coast Guard believe the incidence rate is much higher, because many emergency personnel note the cause of these fatalities as simply drowning. Often, the agency responsible for the waterbody has to pay the costs of removing these watercraft. In some cases where there is shared jurisdiction, watercraft will remain in the waterbody until the jurisdictions determine who will pay to have the watercraft removed, resulting in additional ecological damage to the waterbody.

Because the statute does not provide a time-frame, the towing company is not obligated to notify the owner/lienholder of the impounded watercraft’s location in a timely manner, which results in the accrual of additional impound fees. By the time the towing company notifies the owner/lienholder, storage fees can become so great that the owner/lienholder opts to give the watercraft to the towing company in lieu of paying those fees. In addition, a towing company will wait until they have a buyer before applying for a certificate of number. Under A.R.S. § 5-399(B), the towing company is required

to submit an application for ownership of the abandoned watercraft within 15 days of mailing the notice to the owner/lienholder if the watercraft is not removed.

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

The Commission anticipates the rule changes will prevent or diminish the frequency of the targeted conduct. While it is not possible to quantify the actual change in frequency of the targeted conduct expected from the rule change, the Commission believes that over time, through continued education, outreach, and enforcement of the rule changes identified under (A)(1), the frequency of the targeted conduct will be significantly reduced.

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

The Commission's intent in proposing these amendments is to protect public health and safety, ensure compliance with watercraft operation and registration statutes, administer a boating safety program, and ensure compliance with the U.S. Coast Guard regulations. The Commission believes the majority of the rulemaking will benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language to ease enforcement, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, implementing customer-service-oriented processes, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. In addition to the cost of rulemaking, The Commission anticipates the Department will incur costs to develop and implement an online duplicate watercraft registration system and third-party provider program; however, these amendments will not require new full-time employees as the Department has a designated full-time employees who administer the watercraft program. Therefore, 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: Tim Baumgarten, Boating Law Administrator

Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (623) 236-7383

Fax: (623) 236-7045

E-mail: TBaumgarten@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

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

The Commission anticipates the following persons will bear costs resulting from the proposed amendments:

A person who applies for a watercraft registration, but is unable to provide all of documentation required under R12-4-502. The Commission anticipates this requirement may result in a minimal impact due to the time taken to go to a Department office or notary; in some cases a notary service fee may apply, however, R2-12-1102 limits the fee to \$2 per signature. The Commission believes it is appropriate to require acknowledgement of the applicant's signature on the release of interest form.

A person who owns or operates a livery business whose rental watercraft must display a placard. The Commission anticipates this requirement may result in a minimal impact; costs for an 18x24 magnetic, adhesive, or static cling placard displaying the livery's name and telephone number range from \$13 to \$35; often, price breaks are given when ordering multiples of a sign. However, empirical data indicates most livery businesses already provide placards for their watercraft as they provide a means to identify the owner of a livery watercraft involved in an accident or abandoned after running out of fuel. In addition, the placard is a form of low cost advertising. The Commission believes it is appropriate to require a livery owner to placard a rental watercraft.

The owner of a watercraft in poor condition or sometimes incapable of navigation and unlawfully moored on a public waterbody. The Commission anticipates this requirement may result in moderate to substantial costs depending on the location, size, and type of watercraft. For example, the costs of removing, transporting, and impounding a 65 foot houseboat will be greater than the costs for a 16 foot recreational watercraft. The average cost for the simple overland movement of a houseboat can be as much as \$5,000; this does not include extrication costs.

The Commission anticipates the following persons will benefit from the proposed amendments:

A person who wishes to purchase a duplicate registration online. The Commission anticipates persons will benefit from the convenience of being able to purchase and print a duplicate watercraft registration online from their own home.

A person who owns the foreclosed real property where a motorized watercraft was abandoned. The Commission anticipates persons a person will benefit from being able to designate an agent to act on their behalf when filing an abandoned/unreleased application with the Department.

A person who wishes to obtain a refund of the motorized watercraft registration that was paid in error. The Commission anticipates persons who registered a watercraft in error will benefit from being able to request a refund of fees paid.

A person who owns a motorized watercraft that was towed and impounded. The Commission anticipates persons will benefit from the 15-day notification requirement; timely notification will result in lower impound fees. In addition, the person will not erroneously report the watercraft as stolen.

A person who is interested in becoming an authorized third-party provider. The Commission anticipates persons will benefit from being able to establish a business that provides certain watercraft registration services to the public for a fee.

A person who utilizes the services of a third-party provider. The Commission anticipates persons will benefit from being able to go to additional locations that may be open evenings and weekends to obtain watercraft registrations and decals. The third-party provider may charge a reasonable fee in addition to the State's fees, but the Commission believes the market will determine a fair cost for services provided. The person shall choose whether to pay the additional fee to the third-party provider or conduct their transactions at a Department office.

3. Cost benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999
Substantial	\$10,000 or more

(a) Probable costs and benefits to 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 council.

The principle benefit the Department will receive from the proposed rulemaking is increasing customer satisfaction. Many of these proposals originated as a result of comments submitted by the regulated community. As a result, some of the proposed amendments will create costs to the agency. The Commission anticipates the rulemaking will impact the Department due to costs to develop and implementing an online duplicate watercraft registration system and third-party provider program; however, these amendments will not require new full-time employees as the Department has a designated full-time employees who administer the watercraft program. The Commission anticipates the rulemaking will have little or no impact on other state agencies affected by the implementation and enforcement of the rulemaking. The Commission believes the benefits of the rulemaking outweigh any costs.

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

The Commission anticipates the proposed amendments will have little or no impact on political subdivisions of this state directly affected by the implementation and enforcement of the proposed rulemaking.

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

Overall, the Commission anticipates the proposed amendments will have little or no impact on businesses directly affected by the implementation and enforcement of the proposed rulemaking.

The Commission anticipates a person who owns or operates a livery business will incur costs related to placarding watercraft, however, empirical data indicates most livery businesses already provide placards for their watercraft. The Commission anticipates a person who owns a livery business will benefit from the placarding requirement as it is a form of advertisement.

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

Except as indicated below, the Commission anticipates the proposed amendments will have no substantive impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be insignificant. The Commission anticipates a business that insures a watercraft that was towed will benefit from the notification requirement; timely notification will result in fewer total loss claims.

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

(a) Identification of the small businesses subject to the proposed rulemaking.

The Commission anticipates the rulemaking will result in little or no impact to small businesses. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates small business affected by the rule will not incur any additional costs as a result of the rulemaking. For most small businesses affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be insignificant.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on persons regulated by the rule.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any compliance or reporting requirements on businesses.

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

The Commission anticipates private persons and consumers will incur costs related to increased watercraft fees, but these costs are believed to be insignificant.

The Commission anticipates the rulemaking will benefit private persons and consumers whose watercraft was towed; a timely notification will result in reduced impound/storage costs.

The Commission anticipates the rulemaking will benefit private persons and consumers; amendments proposed to protect public health and safety will result in safer waterways.

The Commission anticipates the rulemaking will benefit private persons and consumers who wish to purchase a duplicate watercraft registration on dates or times when Department offices are closed.

6. Statement of the probable effect on state revenues.

The Commission anticipates the proposed amendments will have little or no impact on 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 rationale for not using the nonselected alternatives.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking.

8. 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.

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public and agency staff who administer and enforce rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, watercraft and boating safety related reports, other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. This rulemaking includes rules that govern boating and water sports. The subjects the rules address are based on statutory requirements and federal regulations rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

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 Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 5. In its review, the team considered all comments from agency staff that administer and enforce Article 5 rules, historical data, current processes and environment, comments submitted by the public,

and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the Watercraft Registration and Boating Safety programs or the Department's objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

FINAL NOTICE OF EXEMPT RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R12-4-504	Amend
R12-4-507	Amend
R12-4-527	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. § 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-321, 5-322, and 5-399.03.

3. The effective date of the rule and the agency’s reason it selected the effective date:

The Commission requests the rulemaking become effective on August 5, 2017. The Commission is amending other rules within Article 5 through the regular rulemaking process and anticipates those rules becoming effective on August 5, 2017. The delayed effective date will allow for a more efficient implementation process because the amendments contained in both rulemaking packages will become effective on the same date.

4. A list of all previous notices published in the Register as specified in R1-4-409(A) that pertain to the record of the exempt rulemaking:

Notice of Rulemaking Docket Opening: 23 A.A.R. 299, February 3, 2017
Notice of Proposed Rulemaking: 23 A.A.R. 273, February 3, 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) 236-7677
E-mail: ccook@azgfd.gov

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml.

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

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 July 7, 2016.

R12-4-504. Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule

The objective of the rule is to establish motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, the penalty for late registration, and a staggered watercraft registration schedule. The \$4 watercraft transfer fee, \$2 duplicate certificate of number or annual decal fee, and \$2.50 dealer certificate of number fee have been in place for over 28 years. Because it has been such a long time since these fees were raised and it will be approximately ten years before they are raised again, the Commission directed the Department to develop fees that recover the costs of providing a service now and into the future.

According to the U.S. Bureau of Labor Statistics, inflation is expected to pick up moderately with an annual growth rate of 2.8%. The Commission proposes to amend the rule to increase watercraft fees as follows: \$13 watercraft transfer fee and \$8 duplicate certificate of number or annual decal fee. In establishing these fees, the Department conducted a transaction cost analysis, multiplied the cost for that transaction by 28%, and then rounded the sum to the nearest dollar amount. For example, the average cost to process a watercraft transfer is \$10.04; \$10.04 multiplied by 28% is \$2.81; \$10.04 plus \$2.81 equals \$12.85 which becomes \$13 when rounded to the nearest dollar. In addition, these fees are in line with fees charged by other Western states for similar services.

The Commission proposes to amend the rule to increase the dealer certificate of number fee to \$20. A dealer certificate of number allows a watercraft dealer to demonstrate any number and type of unregistered watercraft to a potential buyer. In establishing this fee, the Department benchmarked with other Western states and the Arizona Motor Vehicle Department. Because the dealer certificate of number may be used on multiple watercraft offered by the watercraft dealer, the watercraft dealer need only purchase one but may purchase as many as they deem necessary.

An abandoned watercraft is a watercraft that has remained on private property without the consent of the property owner or left unattended for 48 hours or more on public property, 72 hours or more on state or federal lands, or 14 days or more on a state or federal waterway. An unreleased watercraft is a watercraft for which there is no written release of interest from the registered owner. The abandoned/unreleased watercraft process involves: opening and date stamping each application received for time frame accuracy; reviewing each application for accuracy and, when needed, contacting the applicant to verify/correct information or preparing and mailing correspondence for incomplete applications or applications with errors; contacting other state boating agencies to obtain owner and watercraft information when the application is for a watercraft that is not registered in Arizona; when needed, contacting law enforcement agencies for consultation; contacting regional offices to conduct off-site inspections when the applicant is unable to transport the watercraft to the Department for an inspection; searching the U.S. Coast Guard's Vessel Information System when the origin for the watercraft cannot be determined; entering each application into watercraft database; extracting, merging, printing, copying, mailing, and filing correspondence/certified letters for each application to ensure accurate records are created and maintained; preparing and processing the monthly newspaper advertisement and completing and filing an affidavit of publication for each watercraft included in the advertisement; preparing and printing the forms and

letters; tracking and monitoring the application process, updating and reviewing the database daily to ensure compliance with timeframe deadlines, and ensuring applicable reports are updated and cross-referenced throughout the process; and, when applicable, processing the watercraft transfer transaction. The Department expends approximately \$143 to process an abandoned or unreleased watercraft application; this cost reflects the administrative process only and does not include costs incurred when a law enforcement investigation is required. However, rather than establish a fee that recovers the costs of providing a service now and into the future, the Commission proposes to establish a \$100 application fee for abandoned/unreleased watercraft to help defray the costs and burdens the Department incurs in processing these transactions.

Under A.R.S. § 5-323(1)(a), 65% of the watercraft registration revenue shall be used to administer and enforce watercraft and boating sport statutes, provide an information and education program relating to boating and boating safety, and administer the aquatic invasive species program. Resources spent processing duplicate watercraft registrations, duplicate decals, watercraft transfers, and abandoned/unreleased applications in excess of revenues received for providing those services reduces the Department's ability to adequately fund law enforcement patrol and support, information and education program outreach relating to boating and boating safety, and the aquatic invasive species program.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

The objective of the rule is to establish requirements for transferring ownership of an unreleased or abandoned watercraft. Under R12-4-501, "abandoned watercraft" includes any watercraft that has remained on private property without the consent of the private property owner. An "unreleased watercraft" is a watercraft for which there is no written release of interest from the registered owner. The Commission proposes to amend the rule to require a person submitting an abandoned/unreleased watercraft application to pay the fee required under R12-4-504 to help defray the costs and burdens the Department incurs in processing these applications.

R12-4-527. Transfer of Ownership of a Towed Watercraft

The objective of the rule is to establish transfer of ownership requirements for a watercraft in possession of a towing company and ensure compliance with A.R.S. § 5-399 and 5-399.01, which prescribes the basic procedures that allow a towing company to take ownership of a watercraft left unclaimed. Under A.R.S. § 5-399.02, the Department may transfer ownership of a towed watercraft to a towing company free and clear of all liens or encumbrances after receiving an application and the required fee. The Department utilizes the same process for towed watercraft as is used for the abandoned/unreleased watercraft process. The Commission proposes to amend the rule to require a tow company submitting an unclaimed towed watercraft application to pay the fee required under R12-4-504 (\$100) to help defray the costs and burdens the Department incurs in processing these applications and maintain consistency among Article 5 rules. This amendment is authorized under A.R.S. § 5-399.03 which states, "The department may establish fees to implement this article."

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 rules.

8. A showing of good cause why the rule 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, if applicable:

Exempt under A.R.S. § 41-1005(A)(1).

10. A description of the changes between the proposed rules, including supplemental notices, and the final rulemaking package (if applicable):

Not applicable

11. A summary of the public stakeholder comments made about the rulemaking and the agency response to the comments, (if applicable):

The Department posted the draft Notice of Exempt Rulemaking to the Department's website, from February 3 to March 5, 2017, for the purpose of public comment. In addition, on February 3, 2017, the Department emailed information regarding the proposed changes included in the draft Notice of Exempt Rulemaking to all licensed watercraft agents, the President of the Arizona Professional Towing and Recovery Association, Inc., and persons interested in receiving rulemaking notices. The Department also issued a press release regarding the proposed changes included in the draft Notice of Exempt Rulemaking and the Department's contact information for persons interested in submitting a comment.

On February 22, 2017, Department representatives met with licensed watercraft agents and dealers located in Lake Havasu City. This meeting was followed by a meeting with the general membership of the Lake Havasu Marine Association. The meeting was pre-announced in their newsletter that has wide distribution. Between the two meetings, approximately 80 persons were in attendance. Both groups were presented with the proposed changes to the Article 5 rules, very few questions were made in response to the presentations. One commenter asked if the watercraft registration period could be extended from one year to two years. The Department responded that, in compliance with U.S. Coast Guard regulations (which is required under A.R.S. § 5-311), the Department may only register a watercraft for a period of one-year. Other commenter's questions were seeking clarification of proposed changes; none of the members present at either meeting expressed opposition to the proposed amendments. Most attendees seemed satisfied with the proposed amendments and the Department's justification for the rule changes.

The Department received the following public or stakeholder comments in response to the proposed rulemaking:

Written Comment: February 13, 2017: On every boat registration transfer the employees at boat registration say the signature does not match, so they cannot do the transfer. At present, by law the watercraft registration employees have to check with the prior owner with no fee. I believe this is not done, but they claim to do this to justify their jobs. If I get charged \$100 for this expert graphology, I will see you in court.

Agency Response: The rulemaking does not impose a fee when the owner's signature(s) does not match the information on record; a person would only need to obtain a notarized bill of sale from the person they purchased the watercraft from, which is required under A.R.S. § 5-321(G). The Commission proposes to collect a \$100 fee only when a person finds or purchases a watercraft without the proper paperwork, such as a properly assigned title or bill of sale. The Department conducted a process/cost analysis and determined the Department expends no less than \$143 in resources to process one of these transactions; this does not include the time/cost when an enforcement officer has to perform an inspection or conduct an investigation. The Department anticipates the proposed fee will impact less than 4% of our watercraft customers and those customers will still have the option to obtain the proper paperwork on their own instead of paying the proposed fee.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. Additional matters include but are not limited to:

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 the issuance of a regulatory permit, license, or agency authorization.

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 rules. The rules are based on state law.

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

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 material and its location in the rule:

Not applicable

14. Whether the rule was previously made, amended, repealed, or renumbered as an emergency rule? If so, shall state where the text changed between the emergency and exempt rulemaking packages:

The rule was not previously made, amended, repealed, or renumbered as an emergency rule.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 5. BOATING AND WATER SPORTS

Section

R12-4-504. Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-527. Transfer of Ownership of a Towed Watercraft

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-504. Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule

- A.** The following fees are required, when applicable as authorized under A.R.S. §§ 5-321 and 5-322:
1. Motorized watercraft registration fees are assessed as follows:
 - a. Twelve feet and less: \$20
 - b. Twelve feet one inch through sixteen feet: \$22
 - c. Sixteen feet one inch through twenty feet: \$30
 - d. Twenty feet one inch through twenty-six feet: \$35
 - e. Twenty-six feet one inch through thirty-nine feet: \$39
 - f. Thirty-nine feet one inch through sixty-four feet: \$44
 - g. Sixty-four feet one inch and over: \$66
 - h. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
 2. Motorized watercraft transfer fee: ~~\$4~~ \$13.
 3. Duplicate motorized watercraft registration: ~~\$2~~ \$8.
 4. Duplicate decal: ~~\$2~~ \$8.
 5. Watercraft dealer certificate of number: ~~\$2.50~~ \$20.
 6. Abandoned or unreleased watercraft application fee: \$100.
 7. Unclaimed towed watercraft application fee: \$100.
- B.** The Department or its agent shall collect the entire registration fee for a late registration renewal and a penalty fee of \$5, unless exempt under A.R.S. § 5-321(L) or the expiration date falls on a Saturday, Sunday, or state holiday, and the registration is renewed before the close of business on the next working day. The Department or its agent shall not assess a penalty fee when a renewal is mailed before the expiration date, as evidenced by the postmark.
- C.** All new watercraft registrations expire 12 months after the date of issue.
- D.** Resident and nonresident watercraft registration renewals:
1. Shall be valid for a period of 7 to 18 months depending on the expiration month.
 - a. This provision applies to the initial renewal period, only.
 - b. The Department shall prorate fees accordingly.
 2. May be renewed up to six months prior to the expiration month.
 3. Shall expire on the last day of the month indicated by the last two numeric digits of the AZ number, as shown in the following table:

Last two numeric digits of AZ number									Expiration month
00	12	24	36	48	60	72	84	96	December
01	13	25	37	49	61	73	85	97	January
02	14	26	38	50	62	74	86	98	February

03	15	27	39	51	63	75	87	99	March
04	16	28	40	52	64	76	88		April
05	17	29	41	53	65	77	89		May
06	18	30	42	54	66	78	90		June
07	19	31	43	55	67	79	91		July
08	20	32	44	56	68	80	92		August
09	21	33	45	57	69	81	93		September
10	22	34	46	58	70	82	94		October
11	23	35	47	59	71	83	95		November

- E. Watercraft dealer, manufacturer, and governmental use registration renewals expire on October 31 of each year.
- F. Livery and all other commercial use registration renewals expire on November 30 of each year.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

- A. A person who has knowledge and custody of a watercraft abandoned on private property owned by that person may attempt to obtain ownership of the watercraft by way of the abandoned watercraft transfer process. A lienholder of foreclosed real property may assign an agent to act on its behalf.
- B. The last registered owner of an abandoned or unreleased watercraft is presumed to be responsible for the watercraft, unless the watercraft is reported stolen.
- C. The operator of a self-storage facility located in this state and having a possessory lien shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 15, Article 1 when attempting to obtain ownership of a watercraft abandoned while in storage.
- D. A person having a possessory lien under a written rental agreement shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 7, Article 6 when attempting to obtain ownership of a watercraft for which repairs or service fees remain unpaid.
- E. Only a person acting within the scope of official duties as an employee or authorized agent of a government agency may order the removal of a watercraft abandoned on public property or a public waterway.
- F. A person seeking ownership of an abandoned or unreleased watercraft shall submit an application to the Department and pay the fee established under R12-4-504. The application is furnished by the Department and available at any Department office. The application shall include the following information, if available:
 1. Hull identification number, unless exempt under R12-4-505;
 2. Registration number;
 3. Decal number;
 4. State of registration;
 5. Year of registration;
 6. Name, address, and daytime telephone number of the person who found the watercraft;
 7. For abandoned watercraft:

- a. Address or description of the location where the watercraft was found,
 - b. Whether the watercraft was abandoned on private or public property, and
 - c. When applicable, for watercraft abandoned on private property, whether the applicant is the legal owner of the property;
8. Condition of the watercraft: wrecked, stripped, or intact;
 9. State in which the watercraft will be operated;
 10. Length of time the watercraft was abandoned;
 11. Reason why the applicant believes the watercraft is abandoned; and
 12. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- G.** This state and its agencies, employees, and agents are not liable for relying in good faith on the contents of the application.
- H.** The Department shall attempt to determine the name and address of the registered owner by:
1. Conducting a search of its watercraft database when documentation indicates the watercraft was previously registered in this state, or
 2. Requesting the watercraft record from the other state when documentation indicates the watercraft was previously registered in another state.
- I.** If the Department is able to determine the name and address of the registered owner, the Department shall send written notice of the applicant's attempt to register the watercraft to the owner by certified mail, return receipt requested.
1. If service is successful or upon receipt of a response from the registered owner, the Department shall send the following written notification to the applicant, as appropriate:
 - a. If the registered owner provides a written release of interest in the watercraft, the Department shall mail the release of interest and an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
 - b. If the registered owner provides written notice to the Department refusing to release interest in the watercraft, the Department shall notify the applicant of the owner's refusal. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
 - c. If the registered owner does not respond to the notice in writing within 30 days from the date of receipt, the Department shall notify the applicant of the owner's failure to respond. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502;
 - d. If the registered owner does not respond to the notice within 180 days from the date of receipt of the notice, this failure to act shall constitute a waiver of interest in the watercraft by any person having an interest in the watercraft, and the watercraft shall be deemed abandoned for all purposes. The Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall

apply for watercraft registration in compliance with the requirements established under R12-4-502.

2. If the written notice is returned unclaimed or refused, the Department shall notify the applicant within 15 days of the notice being returned that the attempt to contact the registered owner was unsuccessful.
- J.** If the Department is unable to identify or serve the registered owner, the Department shall publish a notice of intent once in a newspaper or other publication of general circulation in this state within 45 days of the Department's notification to the applicant as provided in subsection (I)(2).
1. The published notice shall include a statement of the Department's intent to transfer ownership of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten day period following publication.
 2. Upon request, the Department shall make available to the public a description of the abandoned or unreleased watercraft subject to transfer of ownership.
 3. If the watercraft remains unclaimed after the ten day period, the Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
- K.** A government agency may submit an application for authorization to dispose of a junk watercraft abandoned on state or federal lands or waterways. The application is furnished by the Department and is available at any Department Office. Upon receipt of the application, the Department shall attempt to determine the name and address of the registered owner. If the Department is unable to identify and serve the registered owner, the Department shall publish a notice of intent to authorize the disposal of the junk watercraft as described in subsection (J).
1. The published notice shall include a statement of the Department's intent to authorize the disposal of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten day period following publication.
 2. If the watercraft remains unclaimed after the ten day period, the Department shall mail an authorization to dispose of the junk watercraft to the government agency. The government agency may dispose of the abandoned watercraft and all indicia for that watercraft in any manner the agency determines expedient or convenient.

R12-4-527. Transfer of Ownership of a Towed Watercraft

- A.** For the purpose of this Section, "towed watercraft" means a watercraft that has been impounded by and is in the possession of a towing company located in this state.
- B.** Within 15 days of impounding a watercraft, a towing company shall submit a request to the Department for watercraft registration information as prescribed under A.R.S. § 5-324 and in compliance with A.R.S. § 5-399. The towing company shall present the towed watercraft to the closest Department office for identification if there is no discernible hull identification number or state-issued registration number.
- C.** Within 15 days of receiving the watercraft registration information from the Department, the towing company shall provide written notification by certified mail return receipt requested to the owner and lienholder, if known,

of the watercraft's location.

- D.** If a watercraft remains unclaimed after mailing the notice required under subsection (C) of this Section, the towing company shall submit all of the following to the Department within 15 days of sending the written notification to the owner and lienholder, when known:
1. Evidence of compliance with notification requirements prescribed under A.R.S. § 5-399(A) and subsection (C);
 2. A report on a form furnished by the Department and available at any Department office. The form shall include all of the following information:
 - a. Name of towing company;
 - b. Towing company's business address;
 - c. Towing company's business telephone number;
 - d. Towing company's Arizona Department of Public Safety tow truck permit number;
 - e. Towed watercraft's hull identification number, ~~if known~~;
 - f. Towed watercraft's state-issued registration number, registration decal, and year of expiration, ~~if known~~;
 - g. Towed watercraft's trailer license number, if available;
 - h. State and year of trailer registration, if available;
 - i. Towed watercraft's color and manufacturer, ~~if known~~;
 - j. Towed watercraft's condition, whether intact, stripped, damaged, or burned, along with a description of any damage;
 - k. Date the watercraft was towed;
 - l. Location from which the towed watercraft was removed;
 - m. Entity that ordered the removal of the towed watercraft, and if a law enforcement agency, include officer badge number, jurisdiction, and copy of report or towing invoice;
 - n. Location where the towed watercraft is stored;
 - o. Name and signature of towing company's authorized representative; and
 3. ~~Twenty five dollar~~ The unclaimed towed watercraft application fee authorized under A.R.S. § 5-399.03(2) and established under R12-4-504.
- E.** The towing company shall notify the Department within 24 hours if the watercraft is released, returned to, redeemed, or repossessed by the owner, lienholder, or by a person identified in the Department's record as having an interest in the watercraft.
- F.** If the Department is unsuccessful in its attempt to identify or contact the registered owner or lienholder of the towed watercraft and has determined the towed watercraft is not stolen, the towing company shall follow:
1. Follow the application procedures established under A.R.S. § 5-399.02(B), and
 2. Apply for watercraft registration as established under R12-4-502.
- G.** A towing company that obtains ownership of a watercraft pursuant to A.R.S. § 5-399.02 and this Section shall maintain the following records for a period of three years from the date the Department transferred ownership of the towed watercraft:

1. The request made pursuant to A.R.S. § 5-324.
2. The notification provided pursuant to A.R.S. § 5-399.
3. The application for transfer of ownership pursuant to A.R.S. § 5-399.02.
4. Any other documents required by the Department.

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-501. Boating and Water Sports Definitions

In addition to the definitions provided under A.R.S. § 5-301, the following definitions apply to this Article unless otherwise specified:

“Abandoned watercraft” means any watercraft that has remained:

On private property without the consent of the private property owner;

Unattended for more than 48 hours on a highway, public street, or other public property;

Unattended for more than 72 hours on state or federal lands; or

Unattended for more than 14 days on state or federal waterways, unless in a designated mooring or anchorage area.

“Aids to navigation” means buoys, beacons, or other fixed objects placed on, in, or near the water to mark obstructions to navigation or to direct navigation through channels or on a safe course.

“Authorized third-party provider” means an entity that has been awarded a written agreement with the Department, pursuant to a competitive bid process, to perform limited or specific services on behalf of the Department.

“AZ number” means the Department-assigned identification number with the prefix “AZ.”

“Bill of sale” means a written agreement transferring ownership of a watercraft that includes all of the following information:

Name of buyer;

Name of seller;

Manufacturer of the watercraft, when known;

Hull identification number, unless exempt under R12-4-505;

Purchase price and sales tax paid, when applicable; and

Signature of seller.

“Boats keep out” in reference to a regulatory marker means the operator or user of a watercraft, or a person being towed by a watercraft on water skis, an inflatable device, or similar equipment shall not enter.

“Certificate of number” means the Department-issued document that is proof that a motorized watercraft is registered in the name of the owner.

“Certificate of origin” means a document provided by the manufacturer of a new watercraft or its distributor, its franchised new watercraft dealer, or the original purchaser establishing the initial chain of ownership for a watercraft, such as but not limited to:

Manufacturer’s certificate of origin (MCO);

Manufacturer’s statement of origin (MSO);

Importer’s certificate of origin (ICO);

Importer’s statement of origin (ISO); or

Builder’s certification (Form CG-1261).

“Controlled-use marker” means an anchored or fixed marker on the water, shore, or a bridge that controls the operation of watercraft, water skis, surfboards, or similar devices or equipment.

ARTICLE 5. BOATING AND WATER SPORTS

“Dealer” means any person who engages in whole or in part in the business of buying, selling, or exchanging new or used watercraft, or both, either outright or on conditional sale, consignment, or lease.

“Homemade watercraft” means a watercraft that is not fabricated or manufactured for resale and to which a manufacturer has not attached a hull identification number. If a watercraft is assembled from a kit or constructed from an unfinished manufactured hull and does not have a manufacturer assigned hull identification number it is a “homemade watercraft.”

“Hull identification number” means a number assigned to a specific watercraft by the manufacturer or by a government jurisdiction as prescribed by the U.S. Coast Guard.

“Junk watercraft” means any hulk, derelict, wreck, or parts of any watercraft in an unseaworthy or dilapidated condition that cannot be profitably dismantled or salvaged for parts or profitably restored.

“Letter of gift” means a document transferring ownership of a watercraft that includes all of the following information:

- Name of previous owner;
- Name of new owner;
- Manufacturer of the watercraft, when known;
- Hull identification number, unless exempt under R12-4-505;
- A statement that the watercraft is a gift; and
- Signature of previous owner.

“Livery” means a business authorized to rent or lease watercraft with or without an operator for recreational, non-commercial use as prescribed under A.R.S. § 5-371.

“Manufacturer” means any person engaged in the business of manufacturing or importing new watercraft for the purpose of sale or trade.

“Motorized watercraft” means any watercraft propelled by machinery and powered by electricity, fossil fuel, or steam.

“No ski” in reference to a regulatory marker means a person shall not be towed on water skis, an inflatable device, or similar equipment.

“No wake” in reference to a regulatory marker has the same meaning as “wakeless speed” as defined under A.R.S. § 5-301.

“Operate” in reference to a watercraft means use, navigate, or employ.

“Owner” in reference to a watercraft means a person who claims lawful possession of a watercraft by virtue of legal title or equitable interest that entitles the person to possession.

“Personal flotation device” means a U.S. Coast Guard approved wearable or throwable device for use on any watercraft, as prescribed under A.R.S. §§ 5-331, 5-350(A), and R12-4-511.

“Regatta” means an organized water event of limited duration affecting the public use of waterways, for which a lawful jurisdiction has issued a permit.

“Registered owner” means the person or persons to whom a watercraft is currently registered by any jurisdiction.

ARTICLE 5. BOATING AND WATER SPORTS

“Registration decal” means the Department-issued decal that is proof of watercraft registration.

“Regulatory marker” means a waterway marker placed on, in, or near the water to convey general information or indicate the presence of:

A danger, or

A restricted or controlled-use area.

“Release of interest” means a statement surrendering or abandoning unconditionally any claim or right of ownership or use in a watercraft.

“Sound level” means the noise level measured in decibels on the A-weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer’s instructions.

“Staggered registration” means the system of renewing watercraft registrations in accordance with the schedule provided under R12-4-504.

“State of principal operation” means the state in whose waters the watercraft is used or will be operated most during the calendar year.

“Throwable personal flotation device” means a U.S. Coast Guard approved Type IV device for use on any watercraft such as, but not limited to, a buoyant cushion, ring buoy, or horseshoe buoy.

“Unreleased watercraft” means a watercraft for which there is no written release of interest from the registered owner.

“Watercraft” means a boat or other floating device of rigid or inflatable construction designed to carry people or cargo on the water and propelled by machinery, oars, paddles, or wind action on a sail. Exceptions are seaplanes, makeshift contrivances constructed of inner tubes or other floatable materials that are not propelled by machinery, personal flotation devices worn or held in hand, and other objects used as floating or swimming aids.

“Watercraft agent” means a person authorized by the Department to collect applicable fees for the registration and numbering of watercraft.

“Watercraft registration” means the validated certificate of number and validating decals issued by the Department.

“Wearable personal flotation device” means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid.

Historical Note

Editorial correction subsection (A) (Supp. 78-5). Former Section R12-4-83 renumbered as Section R12-4-501 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-501 renumbered to R12-4-515, new Section R12-4-501 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-502. Application for Watercraft Registration

- A.** Only motorized watercraft as defined under R12-4-501 are subject to watercraft registration.
- B.** A person shall apply for watercraft registration under A.R.S. § 5-321 using a form furnished by the Department and available at any Department office or on the Department's website. The applicant shall provide the following information for registration of all motorized watercraft except homemade watercraft, which are addressed under subsection (C):
1. Arizona residency certification statement, signed by the watercraft owner;
 2. Type of watercraft;
 3. Propulsion type;
 4. Engine drive type;
 5. Overall length of watercraft;
 6. Make and model of watercraft, if known;
 7. Year built or model year, if known;
 8. Hull identification number;
 9. Hull material;
 10. Fuel type;
 11. Category of use;
 12. Watercraft or AZ number previously issued for the watercraft, if any;
 13. State of principal operation; and
 14. For watercraft:
 - a. Owned by a person:
 - i. Legal name;
 - ii. Mailing address;
 - iii. Date of birth; and
 - iv. Signature of each applicant.
 - b. Owned by a business:
 - i. Name of business;
 - ii. Business address;
 - iii. Tax Identification Number; and
 - iv. Signature and title of authorized representative on behalf of the business.
 - c. Held in a trust:
 - i. Name of trust;
 - ii. Primary trustee's address;
 - iii. Tax Identification Number, required when the trust is held by two or more persons;
 - iv. Date of trust; and
 - iv. Signature of each trustee, unless the trust instrument authorizes the signature of one trustee to bind the trust.

ARTICLE 5. BOATING AND WATER SPORTS

15. When ownership of the watercraft is in more than one name, the applicant shall indicate ownership designation by use of one of the following methods:
 - a. Where ownership is joint tenancy with right of survivorship, the applicant shall use “and/or” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. Upon legal proof of the death or incompetency of either owner, the remaining owner may transfer registration of the watercraft.
 - b. Where ownership is a tenancy in common the applicant shall use “and” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. In the event of the death or incompetency of any owner, the disposition of the watercraft shall be handled through appropriate legal proceedings.
 - c. Where the ownership is joint tenancy or is community property with an express intent that either of the owners has full authority to transfer registration, the applicant shall use “or” between the names of the owners. Each owner shall sign the application for registration. To transfer registration, either owner’s signature is sufficient for transfer.
- C.** The builder, owner, or owners of a homemade watercraft shall present the watercraft for inspection at a Department office. The applicant shall provide the following information for registration of homemade watercraft, using the same ownership designations specified in subsection (A)(15):
 1. Type of watercraft;
 2. Propulsion type;
 3. Engine drive type;
 4. Overall length of watercraft;
 5. Year built;
 6. Hull material;
 7. Fuel type;
 8. Category of use;
 9. Each owner’s:
 - a. Name,
 - b. Mailing address, and
 - c. Date of birth;
 10. State of principal operation;
 11. Whether the watercraft was assembled from a kit or rebuilt from a factory or manufacturer’s hull;
 12. Hull identification number, if assigned; and
 13. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- D.** As prescribed under A.R.S. § 5-321, the applicant shall submit a use tax receipt issued by the Arizona Department of Revenue with the application for registration unless any one of the following conditions apply:
 1. The applicant is exempt from use tax as provided under 15 A.A.C. Chapter 5,

ARTICLE 5. BOATING AND WATER SPORTS

2. The applicant is transferring the watercraft from another jurisdiction to Arizona without changing ownership,
 3. The applicant submits a bill of sale or receipt showing the sales or use tax was paid at the time of purchase, or
 4. The applicant submits a notarized affidavit of exemption stating that the acquisition of the watercraft was for rental or resale purposes.
- E.** An applicant for a watercraft dealer registration authorized under A.R.S. § 5-322(F), shall be a business offering watercraft for sale or a watercraft manufacturer registered by the U.S. Coast Guard. A person shall display dealer registration for watercraft demonstration purposes only. For the purposes of this Section, “demonstration” means to operate a watercraft on the water for the purpose of selling, trading, negotiating, or attempting to negotiate the sale or exchange of interest in new watercraft, and includes operation by a manufacturer for purposes of testing a watercraft. Demonstration does not include operation of a watercraft for personal purposes by a dealer or manufacturer or an employee, family member, or an associate of a dealer or manufacturer. The watercraft dealer registration is subject to invalidation pursuant to R12-4-506 if a watercraft with displayed dealer registration is used for purposes other than those authorized under A.R.S. § 5-322(F) or this Section. A watercraft dealer registration applicant shall submit an application to the Department. The application is furnished by the Department and is available at any Department office. The applicant shall provide the following information on the application:
1. All business names used for the sale or manufacture of watercraft in Arizona;
 2. Mailing address and telephone number for each business for which a watercraft dealer registration is requested;
 3. Tax privilege license number;
 4. U.S. Coast Guard manufacturer identification code, when applicable;
 5. Total number of certificates of number and decals requested; and
 6. The business owner’s or manager’s:
 - a. Name,
 - b. Business address,
 - c. Telephone number, and
 - d. Signature.
- F.** In addition to submitting the application form and any other information required under this Section, the applicant for watercraft registration shall submit one or more of the following additional forms of documentation:
1. Original title if the watercraft is titled in another state;
 2. Original registration if the watercraft is from a non-titling state;
 3. Bill of sale as defined under R12-4-501 if the watercraft has never been registered or titled in any state;
 4. Letter of gift as defined under R12-4-501 if the watercraft was received as a gift and was never registered or titled in any state;

ARTICLE 5. BOATING AND WATER SPORTS

5. Court order or other legal documentation establishing lawful transfer of ownership;
 6. Letter of deletion, required when the watercraft was previously documented by the U.S. Coast Guard;
 7. Statement of facts form furnished by the Department and available from any Department office when none of the documentation identified under subsections (F)(1) through (F)(6) exists either in the possession of the watercraft owner or in the records of any jurisdiction responsible for registering or titling watercraft. An applicant for watercraft registration under a statement of facts shall present the watercraft for inspection at a Department office. The statement of facts form shall include the following information:
 - a. Hull identification number,
 - b. Certification that the watercraft meets one of the following conditions:
 - i. The watercraft was manufactured prior to 1972, is 12 feet in length or less, and is not propelled by an inboard engine;
 - ii. The watercraft is owned by the applicant and has never been registered or titled;
 - iii. The watercraft was owned in a state that required registration, but was never registered or titled; or
 - iv. The watercraft was purchased, received as a gift, or received as a trade and has not been registered, titled, or otherwise documented in the past five years.
 - c. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
 8. An original certificate of origin when all of the following conditions apply:
 - a. The watercraft was purchased as new,
 - b. The applicant is applying for watercraft registration within a year of purchasing the watercraft, and
 - c. The certificate of origin is not held by a lien holder.
- G.** If the watercraft is being transferred to a person other than the original listed owner, the applicant for a watercraft registration shall submit a release of interest. The Department may require the applicant to provide a release of interest that is acknowledged before a Notary Public or witnessed by a Department employee when the Department is unable to verify the signature on the release of interest.
- H.** If the original title is held by a lien holder, the applicant for a watercraft registration shall submit a form furnished by the Department and available from any Department office along with a copy of the title. The applicant shall comply with the following requirements when submitting the form:
1. The applicant shall provide the following information on the form:
 - a. Applicant's name,
 - b. Applicant's mailing address,
 - c. Make and model of watercraft, and
 - d. Watercraft hull identification number.
 2. The applicant shall ensure the lien holder provides the following information on the form:
 - a. Lien holder's name,
 - b. Lien holder's mailing address,
 - c. Name of person completing the form on behalf of the lien holder,

ARTICLE 5. BOATING AND WATER SPORTS

- d. Title of person completing the form on behalf of the lien holder, and
 - e. Signature of the person completing the form on behalf of the lien holder, acknowledged before a Notary Public or witnessed by a Department employee.
- I.** If the watercraft's original title or registration is lost, the Department shall register a watercraft upon receipt of one of the following:
- 1. A letter or printout from any jurisdiction responsible for registering or titling watercraft that verifies the owner of record for that specific watercraft;
 - 2. A printout of the Vessel Identification System for that specific watercraft from the U.S. Coast Guard and verification from the appropriate state agency that the information regarding the owner of record for that specific watercraft is correct and current;
 - 3. A statement of facts by the applicant as described under subsection (F)(7) if the watercraft has not been registered, titled, or otherwise documented in the past five years; or
 - 4. The abandoned or unreleased watercraft approval letter issued by the Department, as established under R12-4-507(I).
- J.** The Department shall issue a watercraft registration within 30 calendar days of receiving a valid application and the documentation required under this Section from the applicant or a watercraft agent authorized under R12-4-509.
- K.** All watercraft registrations and supporting documentation are subject to verification by the Department and to the requirements established under R12-4-505. The Department shall require a watercraft to be presented for inspection to verify the information provided by an applicant if the Department has reason to believe the information provided by the applicant is inaccurate or the applicant is unable to provide the required information.
- L.** The Department shall deem an application invalid if the Department receives legal documentation of any legal action that may affect ownership of that watercraft.
- M.** The Department shall invalidate a watercraft registration if the registration is obtained by an applicant who makes a false statement or provides false information on any application, statement of facts, or written instrument submitted to the Department.

Historical Note

Former Section R12-4-84 renumbered as Section R12-4-502 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 2, 1985 (Supp. 85-1). Former Section R12-4-502 repealed, new Section R12-4-502 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-503. Renewal of Watercraft Registration; Duplicate Watercraft Registration or Decal

- A.** The owner of a registered watercraft shall renew the watercraft's registration no later than the day before the prior registration period expires.
1. To renew a watercraft's registration in person or by mail, an applicant shall pay the registration fee authorized under R12-4-504 and present any one of the following:
 - a. Current or prior certificate of number,
 - b. Valid driver's license,
 - c. Valid Arizona Motor Vehicle Division identification card,
 - d. Valid passport, or
 - e. Department-issued renewal notice.
 2. The owner of a registered watercraft may renew a watercraft registration by accessing the Department's online system and paying the applicable watercraft registration fee authorized under R12-4-504.
- B.** The owner of a registered watercraft may obtain a duplicate watercraft registration or decal in person or by mail. To obtain a duplicate watercraft registration or decal in person or by mail, an applicant shall:
1. Complete and submit an application for a duplicate certificate and/or decal form to the Department or its authorized agent, available from any Department office and on the Department's website; and
 2. Pay the duplicate watercraft registration fee authorized under R12-4-504.
- C.** If made available by the Department, the owner of a registered watercraft may obtain a duplicate watercraft registration or decal by accessing the Department's online system and paying the duplicate watercraft registration fee authorized under R12-4-504.
- D.** When a request for a watercraft registration renewal or duplicate watercraft registration or decal is submitted by mail or online, the Department shall mail the registration or decal, as applicable, to the address of record, unless the Department receives a notarized request from the registered owner instructing the Department to mail the duplicate registration or decal to another address.

Historical Note

Former Section R12-4-85 renumbered as Section R12-4-503 without change effective August 13, 1981 (Supp. 81-4).

Former Section R12-4-503 renumbered to R12-4-519, new Section R12-4-503 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-504. Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule

- A.** The following fees are required, when applicable as authorized under A.R.S. §§ 5-321 and 5-322:
1. Motorized watercraft registration fees are assessed as follows:
 - a. Twelve feet and less: \$20

ARTICLE 5. BOATING AND WATER SPORTS

- b. Twelve feet one inch through sixteen feet: \$22
 - c. Sixteen feet one inch through twenty feet: \$30
 - d. Twenty feet one inch through twenty-six feet: \$35
 - e. Twenty-six feet one inch through thirty-nine feet: \$39
 - f. Thirty-nine feet one inch through sixty-four feet: \$44
 - g. Sixty-four feet one inch and over: \$66
 - h. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
2. Motorized watercraft transfer fee: \$13.
 3. Duplicate motorized watercraft registration: \$8.
 4. Duplicate decal: \$8.
 5. Watercraft dealer certificate of number: \$20.
 6. Abandoned or unreleased watercraft application fee: \$100.
 7. Unclaimed towed watercraft application fee: \$100.
- B.** The Department or its agent shall collect the entire registration fee for a late registration renewal and a penalty fee of \$5, unless exempt under A.R.S. § 5-321(L) or the expiration date falls on a Saturday, Sunday, or state holiday, and the registration is renewed before the close of business on the next working day. The Department or its agent shall not assess a penalty fee when a renewal is mailed before the expiration date, as evidenced by the postmark.
- C.** All new watercraft registrations expire 12 months after the date of issue.
- D.** Resident and nonresident watercraft registration renewals:
1. Shall be valid for a period of 7 to 18 months depending on the expiration month.
 - a. This provision applies to the initial renewal period only.
 - b. The Department shall prorate fees accordingly.
 2. May be renewed up to six months prior to the expiration month.
 3. Shall expire on the last day of the month indicated by the last two numeric digits of the AZ number, as shown in the following table:

Last two numeric digits of AZ number		Expiration month							
00	12	24	36	48	60	72	84	96	December
01	13	25	37	49	61	73	85	97	January
02	14	26	38	50	62	74	86	98	February
03	15	27	39	51	63	75	87	99	March
04	16	28	40	52	64	76	88		April
05	17	29	41	53	65	77	89		May
06	18	30	42	54	66	78	90		June
07	19	31	43	55	67	79	91		July
08	20	32	44	56	68	80	92		August

ARTICLE 5. BOATING AND WATER SPORTS

09	21	33	45	57	69	81	93	September
10	22	34	46	58	70	82	94	October
11	23	35	47	59	71	83	95	November

- E.** Watercraft dealer, manufacturer, and governmental use registration renewals expire on October 31 of each year.
- F.** Livery and all other commercial use registration renewals expire on November 30 of each year.

Historical Note

Amended effective December 5, 1978 (Supp. 78-6). Amended effective March 6, 1980 (Supp. 80-2). Former Section R12-4-86 renumbered as Section R12-4-504 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-504 repealed, new Section R12-4-504 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Sup. 03-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking pursuant to A.R.S. § 41-1005(A)(2)(b) at 21 A.A.R. 1046, effective June 16, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 23 A.A.R. 1034; amended by final rulemaking at 23 A.A.R. 1732, both effective August 5, 2017 (Supp. 17-2).

R12-4-505. Hull Identification Numbers

- A.** The Department shall not register a watercraft without a hull identification number.
- B.** The Department shall verify watercraft manufactured after November 1, 1972 have a primary hull identification number that complies with the requirements established under 33 C.F.R. 181, subpart C. The Department shall assign a hull identification number when the watercraft hull identification number does not meet the requirements established under 33 C.F.R. 181, subpart C.
- C.** The hull identification number shall be fully visible and unobstructed at all times. Watercraft manufactured prior to August 1, 1984, are exempt from this requirement provided the obstruction is original equipment and was attached by the manufacturer.
- D.** The Department shall assign a hull identification number to a watercraft with a missing hull identification number only if the Department determines:
 - 1. The hull identification number was not intentionally or illegally removed or altered, unless the application is accompanied by an order of forfeiture, order of seizure, or other civil process;
 - 2. The missing hull identification number was caused by error of the manufacturer or a government jurisdiction; or
 - 3. The watercraft is a homemade watercraft as defined under R12-4-501.
- E.** The Department may assign a hull identification number within 30 days of receipt of a valid application, as described under R12-4-502.
- F.** The Department may accept a bill of sale presented with a missing or nonconforming hull identification number for registration purposes only when:
 - 1. The hull identification number matches the nonconforming hull identification number on the watercraft;

ARTICLE 5. BOATING AND WATER SPORTS

2. Supporting evidence exists that the seller is the owner of the watercraft;
 3. The watercraft is homemade and does not have a hull identification number; or
 4. The watercraft was manufactured prior to November 1, 1972.
- G.** Within 30 days of issuance, the applicant or registered owner shall:
1. Burn, carve, stamp, emboss, mold, bond, or otherwise permanently affix each hull identification number to a non-removable part of the watercraft in a manner that ensures any alteration, removal, or replacement will be obvious.
 2. Ensure the characters of each hull identification number affixed to the watercraft are no less than 1/4 inch in height.
 3. Permanently affix the hull identification number as follows:
 - a. On watercraft with transoms, affix the hull identification number to the right or starboard side of the transom within two inches of the top of the transom or hull/deck joint, whichever is lower.
 - b. On watercraft without a transom, affix the hull identification number to the starboard outboard side of the hull, back or aft within one foot of the stern and within two inches of the top of the hull, gunwale, or hull/deck joint, whichever is lower.
 - c. On a catamaran or pontoon boat, affix the hull identification number on the aft crossbeam within one foot of the starboard hull attachment.
 - d. As close as possible to the applicable location established under subsections (a), (b), or (c) when rails, fittings, or other accessories obscure the visibility of the hull identification number.
 - e. Affix a duplicate of the visibly affixed hull identification number in an unexposed location on a permanent part of the hull.
 4. Certify to the Department that the hull identification number was permanently affixed to the watercraft. The certification statement is furnished by the Department when a hull identification number is issued. The certification statement shall include the location of the permanently affixed hull identification number.

Historical Note

Amended effective January 1, 1980 (Supp. 79-6). Former Section R12-4-87 renumbered as Section R12-4-505 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-505 repealed, new Section R12-4-505 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-506. Invalidation of Watercraft Registration and Decals

- A.** Any watercraft registration obtained by fraud or misrepresentation is invalid from the date of issuance.
- B.** A certificate of number and any decals issued by the Department under R12-4-502 are invalid if any one of the following occurs:

ARTICLE 5. BOATING AND WATER SPORTS

1. Any check, money order, or other currency certificate presented to the Department for payment of watercraft registration or renewal is found to be non-negotiable;
 2. Any person whose name appears on the certificate of number loses ownership of the watercraft by legal process;
 3. Arizona is no longer the state of principal operation;
 4. The watercraft is documented by the U.S. Coast Guard;
 5. An applicant provides incomplete or incorrect information to the Department and fails to provide the correct information within 30 days after a request by the Department;
 6. The Department revokes the certificate of number, AZ numbers, and decals as provided under A.R.S. § 5-391(I);
 7. The Department or its agent erroneously issued a certificate of number or any decals;
 8. A watercraft bearing a dealer registration is used for any purpose not authorized under R12-4-502(E); or
 9. A watercraft registered or used as a livery is operated in violation of A.R.S. § 5-371 or R12-4-514.
- C.** A person shall surrender the invalid certificate of number and decals to the Department within 15 calendar days of receiving written determination from the Department that the certificate of number or decals are invalid, unless the person appeals the Department's determination to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- D.** The Department shall not validate or renew an invalid watercraft registration or decals until the reason for invalidity is corrected or no longer exists.

Historical Note

Adopted effective December 4, 1984 (Supp. 84-6). Amended subsection (B) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (B) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Former Section R12-4-506 repealed, new Section R12-4-506 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

- A.** A person who has knowledge and custody of a watercraft abandoned on private property owned by that person may attempt to obtain ownership of the watercraft by way of the abandoned watercraft transfer process. A lienholder of foreclosed real property may assign an agent to act on its behalf.
- B.** The last registered owner of an abandoned or unreleased watercraft is presumed to be responsible for the watercraft, unless the watercraft is reported stolen.
- C.** The operator of a self-storage facility located in this state and having a possessory lien shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 15, Article 1 when attempting to obtain ownership of a watercraft abandoned while in storage.

ARTICLE 5. BOATING AND WATER SPORTS

- D.** A person having a possessory lien under a written agreement shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 7, Article 6 when attempting to obtain ownership of a watercraft for which repairs or service fees remain unpaid.
- E.** Only a person acting within the scope of official duties as an employee or authorized agent of a government agency may order the removal of a watercraft abandoned on public property or a public waterway.
- F.** A person seeking ownership of an abandoned or unreleased watercraft shall submit an application to the Department and pay the fee established under R12-4-504. The application is furnished by the Department and available at any Department office. The application shall include the following information, if available:
 - 1. Hull identification number, unless exempt under R12-4-505;
 - 2. Registration number;
 - 3. Decal number;
 - 4. State of registration;
 - 5. Year of registration;
 - 6. Name, address, and daytime telephone number of the person who found the watercraft;
 - 7. For abandoned watercraft:
 - a. Address or description of the location where the watercraft was found,
 - b. Whether the watercraft was abandoned on private or public property, and
 - c. When applicable, for watercraft abandoned on private property, whether the applicant is the legal owner of the property;
 - 8. Condition of the watercraft: wrecked, stripped, or intact;
 - 9. State in which the watercraft will be operated;
 - 10. Length of time the watercraft was abandoned;
 - 11. Reason why the applicant believes the watercraft is abandoned; and
 - 12. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- G.** This state and its agencies, employees, and agents are not liable for relying in good faith on the contents of the application.
- H.** The Department shall attempt to determine the name and address of the registered owner by:
 - 1. Conducting a search of its watercraft database when documentation indicates the watercraft was previously registered in this state, or
 - 2. Requesting the watercraft record from the other state when documentation indicates the watercraft was previously registered in another state.
- I.** If the Department is able to determine the name and address of the registered owner, the Department shall send written notice of the applicant's attempt to register the watercraft to the owner by certified mail, return receipt requested.
 - 1. If service is successful or upon receipt of a response from the registered owner, the Department shall send the following written notification to the applicant, as appropriate:

ARTICLE 5. BOATING AND WATER SPORTS

- a. If the registered owner provides a written release of interest in the watercraft, the Department shall mail the release of interest and an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
 - b. If the registered owner provides written notice to the Department refusing to release interest in the watercraft, the Department shall notify the applicant of the owner's refusal. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
 - c. If the registered owner does not respond to the notice in writing within 30 days from the date of receipt, the Department shall notify the applicant of the owner's failure to respond. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
 - d. If the registered owner does not respond to the notice within 180 days from the date of receipt of the notice, this failure to act shall constitute a waiver of interest in the watercraft by any person having an interest in the watercraft, and the watercraft shall be deemed abandoned for all purposes. The Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
2. If the written notice is returned unclaimed or refused, the Department shall notify the applicant within 15 days of the notice being returned that the attempt to contact the registered owner was unsuccessful.
- J.** If the Department is unable to identify or serve the registered owner, the Department shall post a notice of intent on the Department's website within 45 days of the Department's notification to the applicant as provided in subsection (I)(2).
1. The notice shall include a statement of the Department's intent to transfer ownership of the watercraft ten days after the date of posting, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten-day period following posting.
 2. If the watercraft remains unclaimed after the ten-day period, the Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
- K.** A government agency may submit an application for authorization to dispose of a junk watercraft abandoned on state or federal lands or waterways. The application is furnished by the Department and is available at any Department Office. Upon receipt of the application, the Department shall attempt to determine the name and address of the registered owner. If the Department is unable to identify and serve the registered owner, the Department shall publish a notice of intent to authorize the disposal of the junk watercraft as described under subsection (J).

ARTICLE 5. BOATING AND WATER SPORTS

1. The published notice shall include a statement of the Department's intent to authorize the disposal of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten-day period following publication.
2. If the watercraft remains unclaimed after the ten-day period, the Department shall mail an authorization to dispose of the junk watercraft to the government agency. The government agency may dispose of the abandoned watercraft and all indicia for that watercraft in any manner the agency determines expedient or convenient.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final exempt rulemaking at 23 A.A.R. 1034; amended by final rulemaking at 23 A.A.R. 1732, both effective August 5, 2017 (Supp. 17-2).

R12-4-508. New Watercraft Exchanges

- A.** A person may request a no-fee replacement registration for a new watercraft, provided all of the following conditions apply:
1. The person purchased the newly registered watercraft from a new watercraft dealer,
 2. The person returned the watercraft to the new watercraft dealer within 30 days of purchase, and
 3. The new watercraft dealer exchanged the returned watercraft for a watercraft of the same year, make, and model within the same 30 day period.
- B.** To obtain a no-fee replacement registration, the person shall submit the original watercraft registration and a letter from the new watercraft dealer to the Department. The letter shall include all of the following information:
1. A statement that the original watercraft was replaced,
 2. The hull identification number for the original watercraft,
 3. The hull identification number for the replacement watercraft,
 4. The buyer's name, and
 5. The new watercraft dealer's name.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-509. Watercraft Dealers; Agents

- A.** The Department may authorize a watercraft dealer to act as an agent on behalf of the Department for the purpose of issuing temporary certificates of number valid for 45 days for new or used watercraft, provided:
1. The applicant's previous authority to act as a watercraft agent under A.R.S. § 5-321(I) has not been canceled by the Department within the preceding 24 months, and

ARTICLE 5. BOATING AND WATER SPORTS

2. The applicant is a business located and operating within this state and sells watercraft.
- B.** An applicant seeking watercraft agent authorization shall submit an application to the Department. The application is furnished by the Department and available at the Arizona Game and Fish Department, 5000 W. Carefree Highway, Phoenix, AZ 85086. The applicant shall provide the following information on the application:
1. Principal business or corporation name, address, and telephone number or if not a corporation, the full name, address, and telephone number of all owners or partners;
 2. Name, address, and telephone number of the owner or manager responsible for compliance with this Section;
 3. Whether the applicant has previously issued temporary certificates of number under A.R.S. § 5-321(I);
 4. All of the following information specific to the location from which new watercraft are to be sold and temporary certificates of number issued:
 - a. Name of owner or manager;
 - b. Business hours;
 - c. Business telephone number;
 - d. Business type;
 - e. Storefront name; and
 - f. Street address;
 5. Manufacturers of the watercraft to be sold; and
 6. Signature of person named under subsection (B)(2).
- C.** The Department shall either approve or deny the application within the licensing time-frame established under R12-4-106.
- D.** Authorization to act as a watercraft agent is specific to the dealer's business location designated on the application and approved by the Department, unless the dealer is participating in a boat show for the purpose of selling watercraft.
- E.** The watercraft agent shall:
1. Use the assigned watercraft agent number when issuing a temporary certificate of number,
 2. Use the online application system and forms supplied by the Department; and
 3. Collect the appropriate fee as prescribed under R12-4-504 and R12-4-527.
- F.** A watercraft agent is prohibited from issuing a temporary certificate of number for a watercraft when:
1. The watercraft is involved in legal proceedings such as, but not limited to, a marital dissolution, probate, or bankruptcy proceeding;
 2. The watercraft is abandoned or unreleased;
 3. The watercraft is homemade; or
 4. The watercraft has a nonconforming HIN.
- G.** A watercraft agent issuing a temporary certificate of number to the purchaser of a watercraft shall comply with all the following:

ARTICLE 5. BOATING AND WATER SPORTS

1. The watercraft agent shall obtain a completed application that complies with the requirements established under R12-4-502.
 2. The watercraft agent shall identify to the applicant the state registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs.
 3. The fees collected under subsection (E)(3) shall be submitted electronically to the Department prior to the submission of the documentation required under subsection (G)(4).
 4. Within five business days of issuing a temporary certificate of number, a watercraft agent shall deliver or mail the following documentation to the Arizona Game and Fish Department, Watercraft Agent Representative, 5000 W. Carefree Highway, Phoenix, AZ 85086:
 - a. For a new watercraft:
 - i. Original application;
 - ii. Original or copy of the bill of sale issued by the watercraft agent; and
 - iii. Original certificate of origin;
 - b. For a used watercraft:
 - i. Original application;
 - ii. Original or copy of the bill of sale issued by the watercraft agent;
 - iii. Ownership document, such as but not limited to a title, bill of sale, letter of gift or U.S. Coast Guard letter of deletion when the watercraft was previously documented by the U.S. Coast Guard; and
 - iv. Lien release, when applicable.
- H.** The Department may cancel the watercraft agent's authorization if the agent does any one of the following:
1. Fails to comply with the requirements established under this Article;
 2. Submits more than one electronic payment dishonored because of insufficient funds, payments stopped, or closed accounts to the Department within a calendar year;
 3. Predates, postdates, alters, or provides or knowingly allows false information to be provided on an application for a temporary certificate of number; or
 4. Falsifies the application for authorization as a watercraft agent.
- I.** The Department shall provide a written notice to the person stating the reason for the denial or cancellation of watercraft agent status, as applicable. The person may appeal the denial or cancellation to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-510. Refund of Fees Paid in Error

- A.** The Department shall issue a refund for watercraft registration fees paid and, when applicable, the Nonresident Boating Safety Infrastructure fee when:
 - 1. The registered owner has erroneously paid those fees twice for the same watercraft;
 - 2. The registered owner has erroneously paid those fees for a watercraft that has already been sold to another individual; or
 - 3. The registered owner registered the watercraft in error.
- B.** To request a refund of fees paid in error, the person applying for the refund shall surrender all of the following to the Department:
 - 1. Original certificate of number;
 - 2. Registration decals; and
 - 3. Nonresident Boating Safety Infrastructure Decal, when applicable.
- C.** A person requesting a refund of fees shall submit the request to the Department within 30 calendar days of the date the payment was received by the Department.
- D.** The Department shall not refund:
 - 1. A late registration penalty fee.
 - 2. A fee collected by an authorized third-party provider. A person who paid their watercraft registration fee to a third-party provider shall request a refund of fees from that third-party provider.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-511. Personal Flotation Devices

- A.** For the purpose of this Section, “wear” means:
 - 1. The personal flotation device is worn according to the manufacturer’s design or recommended use;
 - 2. All of the device’s closures are fastened, snapped, tied, zipped, or secured according to the manufacturer’s design or recommended use; and
 - 3. The device is adjusted for a snug fit.
- B.** The operator of a canoe, kayak, or other watercraft shall ensure the watercraft is equipped with at least one correctly-sized, U.S. Coast Guard-approved, wearable personal flotation device that is in good and serviceable condition for each person on board the watercraft. The operator of any watercraft shall also ensure the wearable personal flotation devices on board the watercraft are readily accessible and available for immediate use.
- C.** In addition to the personal flotation devices described under subsection (B), the operator of a watercraft that is 16 feet or more in length shall ensure the watercraft is also equipped with a U.S. Coast Guard-approved throwable personal flotation device: buoyant cushion, ring buoy, or horseshoe buoy. Canoes and kayaks are not subject to this subsection.

ARTICLE 5. BOATING AND WATER SPORTS

- D. The operator of a watercraft shall ensure a person twelve years of age or under on board a watercraft shall wear a U.S. Coast Guard approved wearable personal flotation device whenever the watercraft is underway.
- E. The operator of a personal watercraft shall ensure each person aboard the personal watercraft is wearing a wearable personal flotation device approved by the U.S. Coast Guard whenever the personal watercraft is underway.
- F. Subsections (B), (C), and (D) do not apply to the operation of a racing shell or rowing skull during competitive racing or supervised training, if the racing shell or rowing skull is manually propelled, recognized by a national or international association for use in competitive racing, and designed to carry and does carry only equipment used solely for competitive racing.

Historical Note

Amended effective May 26, 1978 (Supp. 78-3). Former Section R12-4-80 renumbered as Section R12-4-511 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-512. Fire Extinguishers Required for Watercraft

- A. The operator of watercraft shall ensure all required fire extinguishers are readily accessible and available for immediate use.
- B. As prescribed under A.R.S. § 5-332, an operator of a:
 - 1. Watercraft less than 26 feet in length shall carry one U.S. Coast Guard-approved B-I type fire extinguisher on board if the watercraft has one or more of the following:
 - a. An inboard engine,
 - b. Closed compartments where portable fuel tanks may be stored,
 - c. Double bottoms not sealed to the hull or which are not completely filled with flotation materials,
 - d. Closed living spaces,
 - e. Closed stowage compartments in which combustible or flammable materials are stored,
 - f. Permanently installed fuel tanks (fuel tanks that cannot be moved in case of a fire or other emergency are considered permanently installed), and
 - g. A fixed fire extinguishing system installed in the engine compartment.
 - 2. Watercraft 26 feet to less than 40 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
 - a. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher, or
 - b. At least one B-I type approved hand-portable fire extinguisher if a fixed fire extinguishing system is installed in the engine compartment.

ARTICLE 5. BOATING AND WATER SPORTS

3. Watercraft 40 feet to not more than 65 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
 - a. At least three B-I type hand-portable fire extinguishers or at least one B-I and one B-II type hand-portable fire extinguishers, or
 - b. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher when a fixed fire extinguishing system is installed in the engine compartment.

Historical Note

Former Section R12-4-81 renumbered as Section R12-4-512 without change effective August 13, 1981 (Supp. 81-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-513. Watercraft Incident and Casualty Reports

- A. The operator or owner of a watercraft involved in any collision, incident or other casualty resulting in injury, death, or property damage exceeding \$500 shall submit the report required under A.R.S. § 5-349 to the Department. The report shall be made on a form furnished by the Department or provided by the law enforcement officer investigating the collision, incident, or other casualty. The operator or owner of the watercraft shall complete the form in full and clearly identify on the form any information that is either not applicable or unknown. The operator or owner of the watercraft submitting the report shall provide all of the information required under 33 C.F.R. 173.57.
- B. The person completing the form shall deliver, mail, or email the form to the Arizona Game and Fish Department, Law Enforcement Branch at 5000 W. Carefree Hwy, Phoenix, AZ 85086 or BoatAccidentReporting@azgfd.gov, as applicable.
- C. The operator or owner of a watercraft involved in any collision, incident or other casualty resulting in injury or death shall submit the report to the Department no later than 48 hours after the incident.
- D. The operator or owner of a watercraft involved in any collision, incident or other casualty resulting only in property damage exceeding \$500 shall submit the report to the Department no later than five days after the incident.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-514. Liveries

- A. A person who rents, leases, or offers any watercraft for compensation, with or without an operator, for recreational, non-commercial use shall register the watercraft as a livery as established under R12-4-502.
- B. A watercraft owned by a boat livery that requires registration and does not have the certificate of number on board shall be identified while in use by means of a:

ARTICLE 5. BOATING AND WATER SPORTS

1. Placard or some other form of display that is affixed to the watercraft and is visible when the watercraft is underway. The placard or other form of display shall indicate the business name and current phone number of the livery.
 2. Receipt provided by the livery to the person operating the rented watercraft. The receipt shall contain the following information:
 - a. Business name and address of the livery as shown on the certificate of number,
 - b. Watercraft registration number as issued by the Department,
 - c. Beginning date and time of the rental period, and
 - d. Written acknowledgment on the receipt of compliance with the requirements prescribed under A.R.S. § 5-371, signed by both the livery operator or their agent and the renter.
- C.** A person operating a rented or leased watercraft or operating a passenger for hire watercraft shall carry the registration or receipt onboard and produce it upon request to any peace officer.
- D.** Failure to comply with the requirements prescribed under A.R.S. § 5-371 and this Section may result in the invalidation of the watercraft registration and decals as provided under A.R.S. § 5-391(A) and R12-4-506.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-515. Display of AZ Numbers and Registration Decals

- A.** A person shall not use, operate, moor, anchor, or grant permission to use, operate, moor, or anchor a watercraft on the boundaries of this state unless such watercraft displays a valid number and current registration decal in the manner established under subsection (B). This Section does not apply to undocumented watercraft displaying a valid temporary numbering certificate authorized under R12-4-509 or exempt under A.R.S. § 5-322.
- B.** The owner of a watercraft shall display the AZ number and registration decals as follows:
1. The AZ numbers shall:
 - a. Be clearly visible and painted on or attached to each exterior side of the forward half of a non-removable portion of the watercraft;
 - b. Be in a color that contrasts with the watercraft's background color so as to be easily read from a distance;
 - c. Include the letters "AZ" and the suffix, separated by a hyphen or equivalent space between the letters "AZ" and the suffix; and
 - d. Read from left to right in well-proportioned block letters that are not less than three inches in height, excluding outline.
 2. The registration decals shall be affixed three inches in front of "AZ" on both sides of the forward half of a non-removable portion of the watercraft.

ARTICLE 5. BOATING AND WATER SPORTS

- C. On watercraft so constructed that it is impractical or impossible to display the AZ numbers in a prominent position on the forward half of the hull or permanent superstructure, the AZ numbers may be displayed on brackets or fixtures securely attached to the forward half of the watercraft.
- D. Persons possessing a dealer watercraft certificate of number issued under A.R.S. § 5-322(F) shall visibly display the AZ numbers and validating registration decals as established under this Section, except that the numbers and decals may be printed or attached to temporary, removable signs that are securely attached to the watercraft being demonstrated.
- E. Expired registration decals issued by any jurisdiction shall be covered or removed from the watercraft, so that only the current registration decals are visible.
- F. Invalid watercraft AZ numbers and registration decals shall not be displayed on any watercraft. The owner of the watercraft shall surrender the AZ numbers and registration decals to the Department in compliance with R12-4-506(C).

Historical Note

Section R12-4-515 renumbered from R12-4-501 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-516. Watercraft Sound Level Restriction

- A. A person shall not operate a watercraft upon the waters of this state if the watercraft emits a noise level that exceeds any of the following.
 - 1. A noise level of 86 dB(A), measured at a distance of 50 feet or more from the watercraft on the “A” weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer’s instructions.
 - 2. For engines manufactured:
 - a. Before January 1, 1993, a noise level of 90 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; and
 - b. On or after January 1, 1993, a noise level of 88 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; or
 - 3. A noise level of 75 dB(A) measured as specified in the Society of Automotive Engineers Recommended Practice shoreline sound test SAEJ1970, revised September 2003 and containing no later editions or amendments.
- B. The materials incorporated by reference in subsection (A) may be viewed at any Department office and are available for purchase from SAE International, 400 Commonwealth Dr, Warrendale, PA 15096-0001 or online at www.sae.org.

ARTICLE 5. BOATING AND WATER SPORTS

- C. A measurement of noise level that is in compliance with this Section does not preclude the conducting of a test or multiple tests of noise levels.
- D. A peace officer authorized to enforce the provisions of this Section who has reason to believe a watercraft is being operated in violation of the noise levels established in this Section may direct the operator of the watercraft to submit the watercraft to an onsite test to measure noise level.
- E. An operator of a watercraft who receives a request from a peace officer to test the noise level of the watercraft under subsection (D) shall allow the watercraft to be tested. If, based on a measurement or test to determine the noise level of a watercraft administered under this Section, the noise level of the watercraft exceeds one or more of the decibel level standards in subsection (A), the operator of the watercraft shall take immediate measures to correct the violation as prescribed under A.R.S. § 5-391(C).
- F. This Section shall not apply to watercraft operated under permits issued in accordance with A.R.S. § 5-336(C).

Historical Note

Former Section R12-4-82 renumbered as Section R12-4-516 without change effective August 13, 1981 (Supp. 81-4). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-517. Watercraft Motor and Engine Restrictions

- A. A person operating a motorized watercraft on the following waters shall only use an electric motor not exceeding 10 manufacturer-rated horsepower:
 - 1. Ackre Lake
 - 2. Bear Canyon Lake
 - 3. Bunch Reservoir
 - 4. Carnero Lake
 - 5. Chaparral Park Lake
 - 6. Cluff Ponds
 - 7. Coconino Reservoir
 - 8. Coors Lake
 - 9. Dankworth Pond
 - 10. Dogtown Reservoir
 - 11. Fortuna Lake
 - 12. Goldwater Lake
 - 13. Granite Basin Lake
 - 14. Horsethief Basin Lake
 - 15. Hulsey Lake
 - 16. J.D. Dam Lake
 - 17. Knoll Lake
 - 18. Lee Valley Lake

ARTICLE 5. BOATING AND WATER SPORTS

19. McKellips Park Lake
20. Pratt Lake
21. Quigley Lake
22. Redondo Lake
23. Riggs Flat Lake
24. Roper Lake
25. Santa Fe Lake
26. Scott's Reservoir
27. Sierra Blanca Lake
28. Soldier Lake (in Coconino County)
29. Stehr Lake
30. Stoneman Lake
31. Tunnel Reservoir
32. Whitehorse Lake
33. Willow Valley Lake
34. Woodland Reservoir
35. Woods Canyon Lake

B. A person operating a motorized watercraft on the following waters shall use only a single electric motor or single gasoline engine not exceeding 10 manufacturer-rated horsepower:

1. Arivaca Lake
2. Ashurst Lake
3. Becker Lake
4. Big Lake
5. Black Canyon Lake
6. Blue Ridge Reservoir
7. Cataract Lake
8. Chevelon Canyon Lake
9. Cholla Lake Hot Pond
10. Concho Lake
11. Crescent Lake
12. Fool Hollow Lake
13. Kaibab Lake
14. Kinnikinick Lake
15. Little Mormon Lake
16. Lower Lake Mary
17. Luna Lake
18. Lynx Lake

ARTICLE 5. BOATING AND WATER SPORTS

19. Marshall Lake
 20. Mexican Hay Lake
 21. Nelson Reservoir
 22. Parker Canyon Lake
 23. Peña Blanca Lake
 24. Rainbow Lake
 25. River Reservoir
 26. Show Low Lake
 27. Whipple Lake
 28. White Mountain Lake (in Apache County)
 29. Willow Springs Lake
- C.** A person shall not operate a watercraft on Frye Mesa Reservoir, Rose Canyon Lake, or Snow Flat Lake, except as authorized under subsection (D).
- D.** A person who possesses a valid use permit issued by the U.S. Forest Service may operate a non-motorized watercraft only on Rose Canyon Lake on any Tuesday, Wednesday, or Thursday during June and July from 9:30 a.m. to 4:30 p.m. Mountain Time Zone. This subsection does not exempt the person from complying with all applicable requirements imposed by federal or state laws, rules, regulations, or orders.
- E.** This Section does not apply to watercraft of governmental agencies or to Department-approved emergency standby watercraft operated by lake concessionaires if operating to address public safety or public welfare.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3).
Amended as an emergency effective July 9, 1976 (Supp. 76-4). Amended effective June 4, 1979 (Supp. 79-3).
Former Section R12-4-89 renumbered as Section R12-4-517 without change effective August 13, 1981 (Supp. 81-4).
Amended subsections (A) and (C) effective December 17, 1981 (Supp. 81-6). Amended effective December 28, 1982 (Supp. 82-6). Amended subsections (A) through (C) effective December 4, 1984 (Supp. 84-6). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by exempt rulemaking at 17 A.A.R. 1189, effective May 24, 2011 (Supp. 11-2). Subsection (A)(9) corrected clerical error (Supp. 11-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-518. Regattas

- A.** When a regatta permit is issued by the Coast Guard, the person in control of the regatta shall at all times be responsible for compliance with the stipulations as prescribed within the regatta permit. Such stipulations may include but not be limited to:
1. A specified number of patrol or committee boats and identified as such.
 2. Availability of emergency medical services.
 3. Spectator control if there exists a danger that life or property is in jeopardy.

ARTICLE 5. BOATING AND WATER SPORTS

- B.** Non-compliance with any stipulation of an authorized permit which jeopardizes the public welfare shall be cause to terminate the regatta until the person in control or a person designated by the one in control satisfactorily restores compliance.
- C.** When a regatta applicant is informed in writing by the Coast Guard that a permit is not required, such regatta may take place, but shall not relieve the regatta sponsor of any responsibility for the public welfare or confer any exemption from state boating and watersports laws and rules.
- D.** The regatta sponsor and all participants shall comply with aquatic invasive species requirements established under A.R.S Title 17, Chapter 2, Article 3.1 and 12 A.A.C. 4, Article 11.

Historical Note

Adopted effective March 5, 1982 (Supp. 82-2). Amended by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

R12-4-519. Reciprocity

As authorized under A.R.S. § 5-322(E), all watercraft currently numbered or exempt from numbering under the provisions of their state of principal operation are exempt from numbering for a period of 90 days after entering this state.

Historical Note

Section R12-4-519 renumbered from R12-4-503 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-520. Arizona Aids to Navigation System

- A.** The Arizona aids to navigation system is the same as that prescribed under 33 C.F.R. 62, revised July 1, 2014, which is incorporated by reference in this Section. The incorporated material is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This Section does not include any later amendments or editions of the incorporated material.
- B.** A person shall not mark the waterways or their shorelines in this state with mooring buoys, regulatory markers, aids to navigation, lights, or other types of permitted waterway marking devices, without authorization from the governmental agency or the private interest having jurisdiction on such waters.
- C.** A person shall not moor or fasten a watercraft to any marker not intended for mooring, or willfully damage, tamper with, remove, obstruct, or interfere with any aid to navigation, regulatory marker or other type of permitted waterway marking devices, except in the performance of authorized maintenance responsibilities or as authorized under R12-4-518 or this Section.
- D.** If a government agency or private interest has not exercised its authority to control watercraft within its jurisdiction under A.R.S. § 5-361, or if waters are directly under the jurisdiction of the Commission, the Department has the authority to control watercraft within that jurisdiction in accordance with the following guidelines:

ARTICLE 5. BOATING AND WATER SPORTS

1. The Department may place controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and shall move or remove the markers only if the need for the protection changes.
 2. The restrictions imposed are clearly communicated to the public by wording on the markers, such as those defined under R12-4-501.
- E.** A governmental agency, excluding federal agencies with jurisdiction over federal navigable waterways, has the authority to control watercraft within that jurisdiction in accordance with the following guidelines:
1. A government agency may place controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and shall move or remove the markers only if the need for the protection changes.
 2. The restrictions imposed are clearly communicated to the public by wording on the markers, such as those defined under R12-4-501.
- F.** Any person may request establishment, change, or removal of controlled-use markers on waters under the jurisdiction of the Commission or on waters not under the jurisdiction of another government agency by submitting a written request providing the reasons for the request to the Arizona Game and Fish Department, 5000 W. Carefree Hwy, Phoenix, AZ 85086.
1. The Department shall either approve or deny the request within 60 days of receipt.
 2. A person may appeal the Department's denial of a request to the Commission as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-523. Controlled Operation of Watercraft

- A.** A person shall not operate any watercraft, or use any watercraft to tow a person on water skis, a surfboard, inflatable device, or similar object, device or equipment in a manner contrary to the area restrictions imposed by lawfully placed controlled-use markers, except for:
1. Law enforcement officers acting within the scope of their lawful duties;
 2. Persons involved in rescue operations;
 3. Persons engaged in government-authorized activities; and
 4. Persons participating in a regatta, during the time limits of the event only.
- B.** The exemptions listed under subsection (A) do not authorize any person to operate a watercraft in a careless, negligent, or reckless manner as prescribed under A.R.S. § 5-341.

Historical Note

ARTICLE 5. BOATING AND WATER SPORTS

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-524. Towed Water Sports

- A.** An operator of a watercraft shall ensure an observer is on duty at all times when a person is being towed behind the watercraft or is surfing a wake created by the watercraft. The observer shall:
 - 1. Be twelve years of age or older;
 - 2. Be physically capable and mentally competent to act as an observer; and
 - 3. Continually observe the person or persons being towed behind the watercraft or surfing a wake created by the watercraft.
- B.** The operator of a watercraft shall ensure a person being towed behind the watercraft or riding a wake created by the watercraft is wearing a wearable personal flotation device approved by the U.S. Coast Guard whenever the watercraft is underway. This subsection applies to any contrivance designed for or used to tow a person behind a watercraft or ride the wake created by a watercraft regardless of whether or not the contrivance is attached to the watercraft. This includes, but is not limited to, boards, discs, hydrofoils, kites, inflatables, and water skis.
- C.** A person shall not operate a watercraft while a person is holding onto or is physically attached to any transom structure of the watercraft, including but not limited to a swim platform, swim deck, swim step, and swim ladder. This subsection does not apply to a person who is:
 - 1. Assisting with docking or departure activities,
 - 2. Exiting or entering the watercraft, or
 - 3. Engaging in law enforcement or emergency rescue activity.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-525. Revocation of Watercraft Certificate of Number, AZ Numbers, and Decals

- A.** For the purposes of this Section, “person” has same meaning as prescribed under A.R.S. § 5-301.
- B.** Upon notice of conviction of a person under A.R.S. § 5-391(G), the Department shall revoke for a period not to exceed two years the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of any Arizona registered watercraft owned by that person and involved in the violation.
- C.** Upon notice of conviction of a person under A.R.S. § 5-391(H), the Department shall revoke for a period not to exceed one year the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals for any Arizona registered watercraft owned by that person and involved in the violation.

ARTICLE 5. BOATING AND WATER SPORTS

- D. Upon receiving notice of conviction, the Department shall serve notice under A.R.S. §§ 41-1092.03 and 41-1092.04 on the person convicted that the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of watercraft the person owns are subject to revocation.
- E. A person whose certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals are subject to revocation may request a hearing. The person shall submit a written request to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Hwy, Phoenix, AZ 85086, within 30 calendar days of receiving the notice described under subsection (D).
- F. If the person requests a hearing, the Department shall, within 60 days of receiving the request, schedule a hearing as prescribed under A.R.S. § 41-1092.05.
- G. After a final decision to revoke the person's certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals, the Department shall serve upon the person an Order of Revocation. Within 15 calendar days of receipt of the notice, the person shall surrender to the Department the revoked certificates of number and decals.
- H. The revocation of the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals does not affect the legal title to or any property rights in the watercraft. Upon receipt of an application to transfer watercraft registration by the new watercraft owner, the Department shall terminate the revocation and allow the owner to transfer the owner's entire interest in the watercraft if the Department is satisfied the transfer is proposed in good faith and not for the purpose of defeating the revocation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-526. Unlawful Mooring

- A. A person, as defined under A.R.S. § 5-301, shall not moor, anchor, fasten to the shore, or otherwise secure a watercraft in any public body of water for more than 14 days within any period of 28 consecutive days unless:
 - 1. The waters are a special anchorage area as defined under A.R.S. § 5-301,
 - 2. Authorized for private dock or moorage, or
 - 3. Authorized by the government agency or private interest having jurisdiction over the waters.
- B. A person shall remove an abandoned or submerged watercraft from public waters within 72 hours of notice by registered mail or personal service of notice to remove such watercraft.
- C. The owner of any abandoned watercraft shall be responsible for all towing and storage fees resulting from the removal of the watercraft from public waters.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-527. Transfer of Ownership of a Towed Watercraft

- A.** For the purpose of this Section, “towed watercraft” means a watercraft that has been impounded by or is in the possession of a towing company located in this state.
- B.** Within 15 days of impounding a watercraft, a towing company shall submit a request to the Department for watercraft registration information as prescribed under A.R.S. § 5-324 and in compliance with A.R.S. § 5-399. The towing company shall present the towed watercraft to the closest Department office for identification if there is no discernible hull identification number or state-issued registration number.
- C.** Within 15 days of receiving the watercraft registration information from the Department, the towing company shall provide written notification by certified mail return receipt requested to the owner and lienholder, if known, of the watercraft’s location.
- D.** If a watercraft remains unclaimed after mailing the notice required under subsection (C) of this Section, the towing company shall submit all of the following to the Department within 15 days of sending the written notification to the owner and lienholder, when known:
 - 1. Evidence of compliance with notification requirements prescribed under A.R.S. § 5-399 and subsection (C);
 - 2. A report on a form furnished by the Department and available at any Department office. The form shall include all of the following information:
 - a. Name of towing company;
 - b. Towing company’s business address;
 - c. Towing company’s business telephone number;
 - d. Towing company’s Arizona Department of Public Safety tow truck permit number;
 - e. Towed watercraft’s hull identification number;
 - f. Towed watercraft’s state-issued registration number, registration decal, and year of expiration, if known;
 - g. Towed watercraft’s trailer license number, if available;
 - h. State and year of trailer registration, if available;
 - i. Towed watercraft’s color and manufacturer;
 - j. Towed watercraft’s condition, whether intact, stripped, damaged, or burned, along with a description of any damage;
 - k. Date the watercraft was towed;
 - l. Location from which the towed watercraft was removed;
 - m. Entity that ordered the removal of the towed watercraft, and if a law enforcement agency, include officer badge number, jurisdiction, and copy of report or towing invoice;
 - n. Location where the towed watercraft is stored; and
 - o. Name and signature of towing company’s authorized representative; and
 - 3. The unclaimed towed watercraft application fee authorized under A.R.S. § 5-399.03(2) and established under R12-4-504.

ARTICLE 5. BOATING AND WATER SPORTS

- E.** The towing company shall notify the Department within 24 hours if the watercraft is released, returned to, redeemed, or repossessed by the owner, lienholder, or by a person identified in the Department's record as having an interest in the watercraft.
- F.** If the Department is unsuccessful in its attempt to identify or contact the registered owner or lienholder of the towed watercraft and has determined the towed watercraft is not stolen, the towing company shall:
 - 1. Follow the application procedures established under A.R.S. § 5-399.02(B), and
 - 2. Apply for watercraft registration as established under R12-4-502.
- G.** A towing company that obtains ownership of a watercraft pursuant to A.R.S. § 5-399.02 and this Section shall maintain the following records for a period of three years from the date the Department transferred ownership of the towed watercraft:
 - 1. The request made pursuant to A.R.S. § 5-324.
 - 2. The notification provided pursuant to A.R.S. § 5-399.
 - 3. The application for transfer of ownership pursuant to A.R.S. § 5-399.02.
 - 4. Any other documents required by the Department.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1241, effective May 26, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking repealed under A.R.S. § 41-1026(E) and permanent new Section made by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final exempt rulemaking at 23 A.A.R. 1034; amended by final rulemaking at 23 A.A.R. 1732, both effective August 5, 2017 (Supp. 17-2).

R12-4-528. Watercraft Checkpoints

- A.** A law enforcement agency may establish a watercraft checkpoint to ensure public safety on state waterways, to screen for unsafe or impaired watercraft operators, or to gather demographic, statistical, and compliance information related to watercraft activities.
- B.** An individual may be required to perform the following during a watercraft stop or at a watercraft checkpoint:
 - 1. Stop or halt as directed when being hailed by a peace officer or entering the established checkpoint boundary as prescribed under A.R.S. § 5-391, and
 - 2. Provide evidence of required safety equipment and registration documentation prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.
- C.** This Section does not limit any state peace officer's authority to conduct routine watercraft patrol efforts prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment

- A.** Before placing that watercraft on the waterways of this State, a nonresident owner of a recreational watercraft who establishes this State as the state of principal operation shall pay the applicable Nonresident Boating Safety Infrastructure Fee (NBSIF) as authorized under A.R.S. §§ 5-326 and 5-327:
1. Twelve feet and less: \$80
 2. Twelve feet one inch through sixteen feet: \$88
 3. Sixteen feet one inch through twenty feet: \$192
 4. Twenty feet one inch through twenty-six feet: \$224
 5. Twenty-six feet one inch through thirty-nine feet: \$253
 6. Thirty-nine feet one inch through sixty-four feet: \$286
 7. Sixty-four feet one inch and over: \$429
 8. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
- B.** The nonresident recreational watercraft owner shall carry and display proof of payment of the fee while the watercraft is underway, moored, or anchored on the waterways of this State. Acceptable proof of payment includes any one of the following:
1. A current Arizona Watercraft Certificate of Number indicating the NBSIF was paid,
 2. A current Arizona Watercraft Temporary Certificate of Number indicating the NBSIF was paid, or
 3. A current Arizona Watercraft Registration Decal indicating the NBSIF was paid.

Historical Note

Adopted effective October 22, 1976 (Supp. 76-5). Former Section R12-4-90 renumbered as Section R12-4-529 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section made by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-530. Authorized Third-party Providers; Agents

- A.** The Department may enter into a contract with a private entity to perform limited or specific services on behalf of the Department in accordance with State procurement laws and rules.
1. The Department may authorize a person to be a third-party provider. An authorized third-party provider shall meet the requirements established by the Department and shall be selected through a competitive bid process.
 2. The Department may authorize a third-party provider to perform any one or more of the following services:
 - a. Watercraft transfer.
 - b. Watercraft registration renewal.
 - c. Duplicate watercraft registration and decal.
 - d. New watercraft registration.

ARTICLE 5. BOATING AND WATER SPORTS

- B.** A person shall not engage in any business pursuant to this Section unless the Department authorizes the person to engage in the business.
- C.** The Department shall establish minimum quality standards of service and a quality assurance program for authorized third-party providers to ensure that an authorized third-party provider is complying with the minimum standards.
- D.** The Department may:
 - 1. Conduct investigations.
 - 2. Conduct audits.
 - 3. Make on-site inspections in compliance with A.R.S. § 41-1009.
 - 4. Require an authorized third-party or employees or agents of an authorized third-party be certified to perform the services prescribed in this Article.
- E.** An authorized third-party provider shall remit to the Department all fees established under R12-4-504 and R12-4-529 it collects.
 - 1. An authorized third-party provider may collect and retain a reasonable and commensurate fee for its services.
 - 2. Each authorized third-party provider that holds itself out as providing services to the public shall identify to the applicant the Department's registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs.
- F.** A third-party who is authorized pursuant to this Section shall:
 - 1. Maintain records in a form and manner prescribed by the Department.
 - 2. Allow access to the records during regular business hours to authorized representatives of the Department or any law enforcement agency to ensure compliance with all applicable statutes and rules.
- G.** The Department may suspend or cancel an authorization or certification, or both, granted pursuant to this Section if the Department determines that the third-party provider or certificate holder has done any of the following:
 - 1. Made a material misrepresentation or misstatement in the application for authorization or certification.
 - 2. Has been convicted of fraud or a watercraft related felony in any state or jurisdiction of the U.S. within the ten years immediately preceding the date a criminal records check is complete.
 - 3. Has been convicted of a felony, other than a felony described in subsection (2), in any state or jurisdiction of the U.S. within the five years immediately preceding the date a criminal records check is complete.
 - 4. Violated a rule or policy adopted by the Department.
 - 5. Failed to keep and maintain records required by this Section.
 - 6. Failed to remit to the Department all fees established under R12-4-504 and R12-4-529 it collects.
 - 7. Allowed an unauthorized person to engage in any business pursuant to this Section.
- K.** If the Department has reasonable grounds to believe that a certificate holder or other person employed by an authorized third-party provider has committed a serious violation, the Department may order a summary

ARTICLE 5. BOATING AND WATER SPORTS

suspension of the third provider's authorization granted pursuant to this Section pending formal suspension or cancellation proceedings. For the purposes of this subsection, "serious violation" means:

1. Watercraft registration fraud.
 2. Improper disclosure of personal information.
 3. Bribery.
 4. Theft.
- L.** On determining that grounds for suspension or cancellation of an authorization or certification, or both, exist, the Department shall give written notice to the third-party provider or certificate holder to appear at a hearing before the Department to show cause why the authorization or certification should not be suspended or canceled.
1. After consideration of the evidence presented at the hearing, the Department shall serve notice of the finding and order to the third-party or certificate holder.
 2. If a third-party authorization or a certification is suspended or canceled, the third-party or certificate holder may appeal the decision pursuant to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

5-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motorized watercraft" means a motorized watercraft that carries passengers or property for a valuable consideration that is paid to the owner, charterer, operator or agent or to any other person interested in the watercraft.
2. "Commission" means the Arizona game and fish commission.
3. "Department" means the Arizona game and fish department.
4. "Documented watercraft" means any watercraft currently registered as a watercraft of the United States pursuant to 46 Code of Federal Regulations part 67.
5. "Domicile" means a person's true, fixed and permanent home and principal residence, proof of which may be demonstrated as prescribed by rules adopted by the commission.
6. "Motorboat" means any watercraft that is not more than sixty-five feet in length and that is propelled by machinery whether or not such machinery is the principal source of propulsion.
7. "Motorized watercraft" means any watercraft that is propelled by machinery whether or not the machinery is the principal source of propulsion.
8. "Nonresident" means a citizen of the United States or an alien person who is not domiciled in this state and who is not a resident as defined in this section.
9. "Operate" means to operate or be in actual physical control of a watercraft while on public waters.
10. "Operator" means a person who operates or is in actual physical control of a watercraft.
11. "Person" includes any individual, firm, corporation, partnership or association, and any agent, assignee, trustee, executor, receiver or representative thereof.
12. "Public waters" means any body of water that is publicly owned or that the public is permitted to use without permission of the owner upon which a motorized watercraft can be navigated, including that part of waters that is common to interstate boundaries and that is within the boundaries of this state.
13. "Resident" means a person who is either:
 - (a) A member of the armed forces of the United States on active duty and stationed in this state for a period of thirty days immediately before the date of application for a watercraft decal.
 - (b) A member of the armed forces of the United States on active duty and stationed in another state or another country and who lists this state as that member's home of record at the time of an application for a watercraft decal.
 - (c) Domiciled in this state for at least six consecutive months immediately before the date of the application for a watercraft decal and who does not claim residency for any purpose in any other state or country.
14. "Revocation" means invalidating the certificate of number, numbers and annual validation decals issued by the department to a watercraft and prohibiting the operation of the watercraft on the waters of this state during a period of noncompliance with this chapter.
15. "Sailboard" means any board of less than fifteen feet in length which is designed to be propelled by wind action upon a sail for navigation on the water by a person operating the board.
16. "Special anchorage area" means an area set aside and under the control of a federal, state or local governmental agency, or by a duly authorized marina operator or concessionaire for the mooring, anchoring or docking of watercraft.
17. "State of principal operation" means the state where a watercraft is primarily used, navigated or employed.
18. "Underway" means a watercraft that is not at anchor, is not made fast to the shore or is not

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

aground.

19. "Undocumented watercraft" means any watercraft which does not have and is not required to have a valid marine document as a watercraft of the United States.
20. "Wakeless speed" means a speed that does not cause the watercraft to create a wake, but in no case in excess of five miles per hour.
21. "Watercraft" means any boat designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water, or as may be defined by rule of the commission.
22. "Waterway" means any body of water, public or private, upon which a watercraft can be navigated.

5-302. Application of chapter

- A. This chapter applies to all watercraft operating on all of the waterways of this state, including that part of waters that is common to interstate boundaries and that is within the boundaries of this state, excluding vessels owned by agencies of the federal government in performance of their official duties.
- B. Section 5-391, subsections G and H and sections 5-392 and 5-393 apply to all watercraft in this state, whether or not operating on waterways of this state, and includes watercraft operating on waterways that are part of water that is common to interstate boundaries and that is within the boundaries of this state.

5-311. Powers and duties of the commission

- A. The commission may:
 1. Make rules and regulations required to carry out in the most effective manner all the provisions of this chapter.
 2. Modify the equipment requirements in conformity with the provisions of the federal navigation laws or with the navigation regulations promulgated by the United States coast guard. Prescribe additional equipment requirements not in conflict with federal navigation laws or regulations.
 3. Provide for a uniform waterway marking system and establish, operate and maintain aids to navigation and regulatory markers on the waters of this state.
 4. Make regulations for the registration and operation of watercraft.
 5. Prescribe regulations for the issuance of permits for motor boat races, regattas or other watercraft events.
 6. Administer the law enforcement and boating safety program on the state level, and accept federal grants for the purpose of boating safety and related enforcement.
- B. Regulations established under this section shall not be in conflict with those prescribed by the United States coast guard.

5-321. Numbering; registration fees; exemption from taxation; penalty; procedures

- A. Except as provided in section 5-322, the owner of each motorized watercraft requiring numbering by this state shall file an application for a registration number with the department, or its agent, on forms approved by the department. Except as provided by rule adopted by the commission, the application shall be signed by the owner of the motorized watercraft and shall be accompanied by a registration fee. After the effective date of this amendment to this section, the commission shall establish by rule a registration fee for each motorized watercraft requiring numbering by this state.
- B. Pursuant to article IX, section 16, Constitution of Arizona, watercraft are exempt from ad valorem property tax and from license taxes in lieu of property tax.

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

- C. The length of the motorized watercraft shall be measured from the most forward part of the bow excluding the bowsprit or jibboom, over the centerline to the rearmost part of the transom excluding sheer, outboard motor, rudder, handles or other attachments.
- D. The commission may assess an additional registration fee, to be collected at the same time and in the same manner as the registration fee imposed by subsection A of this section. The amount of the additional fee shall be determined by the commission and may be imposed in different amounts with respect to resident and nonresident owners. An additional registration fee under this subsection is to be used solely for the purpose of the lower Colorado river multispecies conservation program under section 48-3713.03.
- E. On receipt of the application in approved form with the applicable fees, the department or its agent shall enter the application on the records of its office and issue to the applicant two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals in such manner as may be prescribed by rules of the commission. The number and decals shall be maintained in legible condition. The certificate of number or commission approved proof of valid certificate of number, except as provided in section 5-371, shall be available at all times for inspection by a peace officer whenever the watercraft is in operation. No number issued by another state or the United States coast guard, unless granted exemption or exception pursuant to this chapter, shall be displayed on the watercraft.
- F. No person may operate a motorized watercraft on the waterways of this state unless the watercraft displays the assigned number and current annual decals or the person is in possession of a valid thirty- day temporary registration as prescribed by this article.
- G. No motorized watercraft shall be purchased, sold or otherwise transferred without assignment by the owner of the current numbering certificate or other documentation as may be prescribed by rules of the commission. Within fifteen days after such transfer, the person to whom such transfer is made shall make application to the department to have the motorized watercraft registered in the person's name by the department, for which the department shall charge a transfer fee as prescribed in rule by the commission. The department shall not issue or transfer a numbering certificate for a motorized watercraft to a person who is subject to the use tax under title 42, chapter 5, article 4 unless the applicable tax has been paid as shown by a receipt from the collecting officer. Persons doing business as marine dealers and licensed as such by this state are not required to register in their name any watercraft in their possession that may be offered for resale.
- H. In the event of the loss or destruction of the certificate of number or annual decal, the department shall issue a duplicate to the owner on payment of a fee as prescribed in rule by the commission.
- I. The department may issue any certificate of number directly or may authorize any person to act as agent for the issuance of the certificate of number in conformity with this chapter and with any rules of the commission. An agent that contracts with the commission to renew certificates of number by telecommunication may impose additional fees for the services as provided in the contract.
- J. The owner shall furnish to the department notice of the transfer of all or any part of the owner's interest other than the creation of a security interest in a motorized watercraft numbered in this state pursuant to this chapter or of the destruction or abandonment of such watercraft within fifteen days. Such transfer, destruction or abandonment shall terminate the certificate of number of such watercraft, except that in the case of a transfer of a part interest that does not affect the owner's right to operate such watercraft, the transfer shall not terminate the certificate of number.

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

- K.** Any holder of a certificate of number shall notify the department within fifteen days if the holder's address no longer conforms to the address appearing on the certificate and, as a part of such notification, shall furnish the department with the holder's new address. The commission may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.
- L.** On renewal of any motorized watercraft registration that has not been renewed by the current expiration date, the department shall assess a penalty unless the watercraft ownership has been transferred and the watercraft was not registered subsequent to the expiration date. The commission shall establish the penalty by rule. If more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived.

5-321.01. Staggered watercraft registration; rules

- A.** The commission shall establish a system of staggered registration on a monthly basis in order to distribute the work of registering watercraft as uniformly as practicable throughout the twelve months of the calendar year.
- B.** All watercraft registrations provided for in this article expire in accordance with the schedules established by the commission. The commission may set the number of renewal periods within a month from one each month to one each day depending on which system is most economical and best accommodates the public.
- C.** The commission, in order to initiate the staggered registration system, may register a watercraft for a period of greater or less than twelve months up to a period of thirty-six months. If a registration period is set for a period other than twelve months the commission may prorate the registration fee.
- D.** The commission shall adopt rules necessary to accomplish the purposes of this section.

5-322. Motorized watercraft to be numbered; exceptions

- A.** All motorized watercraft whether underway, moored or anchored on the waters within the boundaries of the state shall be numbered in accordance with this chapter or rules of the commission in accordance with the federally approved numbering system except:
 - 1. Foreign watercraft temporarily using the waters of the state.
 - 2. Military or public vessels of the United States, except recreational type public vessels.
 - 3. Watercraft used solely as lifeboats.
 - 4. Undocumented watercraft operating under a valid temporary certificate issued pursuant to rules adopted by the commission.
 - 5. Documented watercraft numbered in accordance with the regulations of the United States coast guard.
- B.** Motorized watercraft owned and operated exclusively by the state or by any political subdivision of the state shall be numbered, but no registration fee shall be paid on the watercraft.
- C.** All owners of motorized watercraft when in the course of interstate operation displaying a current and valid number issued under an approved federal numbering system of the United States coast guard, a state, the Commonwealth of Puerto Rico, the Virgin Islands, Guam or the District of Columbia shall register such watercraft with the department before the expiration of the reciprocity period prescribed by rules of the commission.
- D.** All motorized watercraft, when in the course of interstate operation and not required to be numbered in their state of principal operation, shall comply with the requirements of subsection C of this section.

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

- E. When this state becomes the new state of principal operation of a motorized watercraft displaying a current number issued under a federally approved numbering system, the validity of such number shall be recognized for a period of ninety days. On expiration of the ninety-day period and before any subsequent use, the owner shall number any motorized watercraft pursuant to section 5-321.
- F. Each dealer or manufacturer in this state engaged in the sale of motorized watercraft using the watercraft for demonstration shall obtain one or more dealer watercraft certificates of number with the current validating decals. Applications, fees for each certificate of number and accompanying current decals, renewal and display of certificates of number shall be as prescribed in this chapter or by rules of the commission.

5-323. Disposition of fees

Each month monies received from the registration and infrastructure fees received under this chapter for the numbering of watercraft shall be deposited, pursuant to sections 35-146 and 35-147, in the watercraft licensing fund. Each month, the department shall distribute the monies as follows:

- 1. All revenues collected pursuant to section 5-321, subsection A and section 5-326 shall be allocated as follows:
- 2. Sixty-five per cent shall be deposited in the watercraft licensing fund. The watercraft licensing fund is to be used by the department for administering and enforcing this chapter, providing an information and education program relating to boating and boating safety and administering any aquatic invasive species program established under this title or title 17. These monies are subject to legislative appropriation.
- 3. Thirty-five per cent of such revenues shall be further allocated as follows:
 - (a) Fifteen per cent to the state lake improvement fund to be used as prescribed by section 5-382.
 - (b) Eighty-five per cent to the law enforcement and boating safety fund to be used as prescribed by section 5-383.
- 4. All revenues collected from any additional registration fees collected pursuant to section 5-321, subsection C shall be paid to an account designated by a multi-county water conservation district established under title 48, chapter 22 to be used solely for the lower Colorado river multispecies conservation program and for no other purpose.

5-324. Public records; identification of requester; supplying information by mail; records custodians; certification of records

- A. All records of the department made or kept pursuant to this article are public records.
- B. The department shall furnish information or copies from the records kept pursuant to this section subject to sections 39-121.01 and 39-121.03.
- C. Persons requesting a copy of a public record pursuant to this section shall identify themselves and state the reason for making the request. The department shall verify the name and address of the person making the request by requiring the person to produce necessary information to ensure that the information given is true and correct.
- D. The department shall not divulge any information from a watercraft registration record unless the person requesting the information provides the following:
 - 1. The name of the owner.
 - 2. The hull identification number of the watercraft.
 - 3. The department-issued number assigned to the watercraft.
- E. The procedures required by subsections C and D of this section do not apply to:

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

1. This state or any of its departments, agencies or political subdivisions.
 2. A court.
 3. A law enforcement officer.
 4. A licensed private investigator.
 5. Financial institutions and enterprises under the jurisdiction of the department of insurance and financial institutions or a federal monetary authority.
 6. The federal government or any of its agencies.
 7. An attorney admitted to practice in this state who alleges the information is relevant to any pending or potential court proceeding.
 8. An operator of a self-service storage facility located in this state who alleges both of the following:
 - (a) That the watercraft on which the operator is requesting the record is in the operator's possession.
 - (b) That the record is requested to allow the operator to notify the registered owner and any lienholders of record of the operator's intent to foreclose its lien and to sell the watercraft.
 9. A towing company located in this state that alleges both of the following:
 - (a) That the watercraft on which the towing company is requesting the record is in the towing company's possession.
 - (b) That the record is requested to allow the towing company to notify the registered owner and any lienholders of record, if known, of the towing company's intent to sell the watercraft.
 10. An insurance company.
- F.** The department may supply the requested information by mail or telecommunications.
- G.** The director may designate as custodian of the department's public records those department employees the director deems necessary. If a public record of the department has been certified by a records custodian and authenticated as required under proof of records (records of public officials), rules of civil procedure and the rules of evidence for courts in this state, it is admissible in evidence without further foundation.
- H.** Notwithstanding subsection D of this section, information may be supplied for commercial purposes, as defined in section 39-121.03, if the information is transmitted in a machine-readable form such as computer magnetic tape to the person making the request.
- I.** The department shall maintain for a period of at least one year a file of requests for information that shall be maintained by the name of the person whose record was requested, except those requests made by government agencies.

5-326. Nonresidents; registration; payment of fees; exemption

- A.** A nonresident owner of a watercraft who establishes this state as the state of principal operation shall register and number that watercraft pursuant to this article and pay an additional boating safety infrastructure fee assessed pursuant to section 5-327 before placing that watercraft on the waterways of this state.
- B.** A member of the armed forces of the United States who is on active duty and stationed in this state for a period of at least thirty days immediately before applying for watercraft registration is exempt from this section.
- C.** The owner shall carry and display proof of payment of the fee required by this section in a manner prescribed by the commission while the watercraft is underway, moored or anchored on the waterways of this state.
- D.** Subsection A of this section does not apply to nonrecreational or commercial motorized

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

watercraft.

5-327. Nonresident boating safety infrastructure fees

- A. In accordance with section 5-326, the commission shall assess a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident as defined in section 5-301. The fees assessed pursuant to this section shall be paid in addition to the fees required pursuant to section 5-321.
- B. For the purposes of section 5-326, subsection A, the commission shall establish nonresident boating safety infrastructure fees. After the effective date of this amendment to this section, the commission shall establish by rule a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident.
- C. The length of the motorized watercraft shall be measured in the same manner prescribed in section 5- 321, subsection C.
- D. Unless the person or watercraft qualifies for an exemption pursuant to section 5-326, no person who is subject to this section shall operate or grant permission to operate a watercraft within the boundaries of this state unless that watercraft displays a valid nonresident boating safety infrastructure decal in conformance with the rules adopted pursuant to section 5-326.

5-331. Personal flotation devices; requirements; exception

- A. All watercraft, except sailboards, shall carry United States coast guard approved personal flotation devices of the type and category prescribed by regulations of the commission. There shall be one such device in good and serviceable condition for each person on board and so placed as to be readily accessible for immediate use.
- B. Any person who is being towed behind a watercraft shall wear a wearable personal flotation device while being towed except for a performer who is engaged in a professional exhibition.
- C. A child who is twelve years of age or under and who is on board a watercraft shall wear a properly fitting United States coast guard approved wearable personal flotation device whenever the watercraft is underway.
- D. Subsection C of this section does not apply to small passenger vessels that are not for hire on navigable waters, that maintain a coast guard certificate of inspection and that are being operated by United States coast guard licensed pilots within a distance of one-fourth mile from the nearest shore as a means of transporting passengers and when the duration of time the vessel is underway on the water does not exceed ten minutes.

5-332. Fire extinguishers

- A. All watercraft, unless exempted by the commission, carrying as fuel any volatile liquid having a flash point of one hundred ten degrees Fahrenheit or less shall have aboard a readily accessible United States coast guard approved fire extinguisher in a condition available for immediate and effective use.
- B. All watercraft over twenty-six feet in length and carrying as fuel any volatile liquid having a flash point of one hundred ten degrees Fahrenheit or less shall have aboard such fire extinguishers as may be prescribed or approved by the regulations of the United States coast guard.

5-336. Muffling devices

- A. Every motor driven watercraft shall at all times be equipped with effective equipment, in good working order and in constant operation, to prevent excessive or unusual noise except as provided in subsection C.
- B. It is not the intent of this section to prohibit the use of any type of exhaust system or exhaust

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

device, including those systems and devices which do not discharge water with the exhaust gases, if such system or device complies with subsection A of this section.

- C. All watercraft actually competing in a regatta, boat race or official trials for speed records, and within the time limits authorized by the sanctioning body of such event are exempt from this section. Permits designating place and time limits are required and shall be issued by the department prior to the testing of watercraft on the water when sufficient evidence is provided by the applicant that such watercraft is actually entered in an event sanctioned by a national or regional organization having jurisdiction over the event.

5-341. Negligent operation of watercraft or water skis; restriction in operation of watercraft; violation; classification

- A. No person shall operate a watercraft in a careless, reckless or negligent manner.
- B. A person shall not operate a watercraft while allowing a person to ride on the gunwales, the transom or the decked over bow of a watercraft propelled by machinery operating in excess of wakeless speed except if:
 - 1. That portion of the watercraft was designed and constructed for the purpose of carrying passengers at all speeds.
 - 2. The watercraft is being maneuvered for anchoring, mooring or casting off moorings.
- C. No watercraft shall be operated with a passenger or passengers on the bow in such a manner as to obstruct the view of the operator.
- D. No person on water skis, a surfboard or a similar contrivance shall behave in a careless, reckless or negligent manner. Except in case of emergency no person under the age of twelve years may operate a watercraft propelled by a motor of greater than eight horsepower unless the person's parent or legal guardian or at least one person who is eighteen years of age or older is present on the watercraft.
- E. Except as provided in subsection E, it is unlawful for any person to allow another person under the age of twelve to operate a motor-powered watercraft.
- F. A person violating subsection A, B, C or D is guilty of a class 2 misdemeanor.

5-343. Speed restrictions; excessive wake

No person shall operate a watercraft in excess of the posted limit or at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person or other watercraft, swamping other watercraft or otherwise endangering the lives or property of other persons.

5-346. Water skiing

- A. No watercraft which has in tow a person or persons on water skis, a surfboard or similar contrivance shall be operated in or upon any waterway unless such watercraft shall be occupied by at least two persons, an operator and an observer.
- B. The operator shall observe other watercraft traffic, swimmers and hazards and shall not tow a person or persons on water skis, a surfboard or similar contrivance so close to other watercraft, swimmers or structures as to constitute a hazard to life or limb of any person.
- C. The observer shall continuously observe the person or persons being towed and shall display a flag immediately after the towed person or persons falls into the water and during the time preparatory to skiing while the person or persons are still in the water. Such flag shall be a bright or brilliant orange or red color, measuring no less than twelve inches on each side, mounted on a handle and displayed as to be visible from every direction.

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

D. No watercraft operator shall have in tow a person or persons on water skis, a surfboard or similar contrivance during the hours between sunset and sunrise.

5-347. Interference with navigation or launching areas

- A.** No person shall unreasonably or unnecessarily interfere with other watercraft, with the free and proper use of the waterways of the state or with areas used for launching watercraft onto such waterways. Anchoring or swimming in heavily traveled channels or launching areas shall constitute such interference.
- B.** No person shall camp or park any vehicle on any boat launching area or otherwise restrict or prevent free access to any area.

5-349. Watercraft casualties; violation; classification

- A.** The operator of a watercraft involved in a collision, accident or other casualty, to the extent the operator can do so without serious danger to the operator's own watercraft or persons aboard, shall:
 - 1. Immediately stop the watercraft at the scene of the collision, accident or other casualty or as close to the scene of the collision, accident or other casualty as possible but shall immediately return to the scene.
 - 2. Render all practical and necessary assistance to persons affected to save them from danger caused by the collision, accident or other casualty.
 - 3. Remain at the scene of the collision, accident or other casualty until the operator has complied with subsection B of this section.
- B.** The operator of a watercraft involved in a collision, accident or other casualty shall give the operator's name and address and the identification of the operator's watercraft to any person injured and to the owners of any property damaged.
- C.** Whenever death or injury results from any watercraft collision, accident or other casualty, a written report shall be submitted within forty-eight hours. For every other collision, accident or other casualty involving property damage exceeding five hundred dollars, a report shall be submitted within five days after the incident by the operator or owner of the watercraft involved. Written reports shall be submitted directly to the department for use in statistical studies for casualty prevention. Reports shall not be used as evidence in any trial, civil or criminal, arising from any collision, accident or other casualty. On request, a report shall be forwarded to the United States coast guard or other authorized federal agency to be used in statistical studies for casualty prevention.
- D.** To maintain uniformity, watercraft casualty reports shall be on a form approved by the commission.
- E.** Every peace officer who, in the regular course of duty, investigates any watercraft collision, accident or other casualty involving death or personal injury or involving property damage exceeding five hundred dollars shall prepare and transmit a report to the department pursuant to subsection C of this section.
- F.** If the operator of a watercraft is involved in a collision or accident that results in death or serious physical injury, as defined in section 13-105, and the operator fails to stop or comply with the requirements of subsection A of this section, the operator is guilty of a class 5 felony. If the operator of a watercraft is involved in a collision or accident that results in injury other than death or serious physical injury and the operator fails to stop and comply with the requirements of subsection A of this section, the operator is guilty of a class 6 felony. If the operator of a watercraft is involved in a collision or accident that results only in damage to property of another or another watercraft, and the operator fails to stop and comply with the

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

requirements of subsection B of this section, the operator is guilty of a class 3 misdemeanor.

5-350. Personal watercraft; requirements for operation; definition

- A. A person shall not operate a personal watercraft unless each person aboard is wearing a wearable personal flotation device that is approved by the United States coast guard.
- B. A person who operates a personal watercraft that is equipped by the manufacturer with a lanyard type engine cutoff switch shall attach the lanyard to his body, clothing or personal flotation device as appropriate for the specific watercraft.
- C. A person shall not operate or knowingly allow another person to operate a personal watercraft under his ownership or control in a reckless or negligent manner endangering the life or property of another person. Prima facie evidence of reckless operation exists if the person commits two or more of the following acts simultaneously:
 - 1. Operates the personal watercraft within a zone of proximity to another watercraft closer than sixty feet unless both are leaving a flat wake or are traveling at a speed of five nautical miles per hour or less.
 - 2. Operates the personal watercraft within the vicinity of a motorboat in a manner that obstructs the visibility of either operator.
 - 3. Heads into the wake of a motorboat that is within a zone of proximity closer than sixty feet and causes one-half or more of the length of the personal watercraft to leave the water.
 - 4. Within a zone of proximity to another watercraft closer than sixty feet, maneuvers quickly, turns sharply or swerves, unless the maneuver is necessary to avoid a collision.
- D. If equipped by the manufacturer, a person shall not operate a personal watercraft without a functioning spring-loaded throttle mechanism that immediately returns the engine to an idle speed on release of the operator's hand from the control or without any other engine cutoff feature that is installed by the manufacturer.
- E. A personal watercraft shall not be loaded and operated with passengers or cargo beyond its safe carrying capacity or the manufacturer's recommended limits.
- F. A person who owns, leases or hires a personal watercraft or who has charge or control over a personal watercraft shall not authorize or knowingly permit the personal watercraft to be operated in violation of this section.
- G. This section does not apply to a performer who engages in a professional exhibition or to a person who participates in an officially sanctioned regatta, race, marine parade, tournament or exhibition.
- H. For purposes of this section, "personal watercraft" means a watercraft that is less than sixteen feet long, propelled by machinery powering a water jet pump and designed to be operated by a person who sits, stands or kneels on rather than sitting or standing inside the watercraft.

5-361. Uniform navigational marking of waters; intergovernmental agreements

- A. No city, county or person shall mark the waters of this state in any manner in conflict with the uniform navigational marking standards of waters as prescribed by the commission or the United States coast guard.
- B. On waters where the uniform state waterway marking system has been established and maintained by a governmental agency, the commission may, upon request of such agency, enter into agreements to assist with the maintenance of the system.

5-371. Boat liveries; requirements

- A. The owner of a boat livery shall keep or cause to be kept a record of the name and address of the person or persons hiring any watercraft which is designed or permitted by him to be

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

operated as a watercraft, the identification number thereof, the departure date and time and the expected and actual time of return. Such record shall be preserved for at least three months.

- B. Neither the owner of a boat livery nor his agent or employee shall permit any watercraft to be operated from his premises unless it shall have been provided, either by the owner or renter, with the equipment required by this chapter.
- C. The certificate of number for a watercraft less than twenty-six feet in length that is leased or rented to a person for noncommercial use of less than twenty-four hours may be retained on shore by the owner or his representative at the place from which the watercraft departs or returns to the possession of the owner or his representative. A watercraft which does not have the certificate of number on board shall be identified while in use as may be prescribed by the regulations of the commission.

5-391. Enforcement; violation; classification

- A. Any person who violates any provision of this chapter, except section 5-341, subsection A, B, C or D, section 5-349, section 5-350, subsection C, section 5-393, 5-395, 5-396 or 5-397 and subsection C, D, G or H of this section or any rule issued thereunder, is guilty of a petty offense. Any person who violates section 5-350, subsection C is guilty of a class 2 misdemeanor.
- B. All peace officers of the state, counties and cities shall enforce the provisions of this chapter and all laws and rules relating to the operation of watercraft.
- C. In the enforcement of this chapter, the operator of the watercraft on being hailed by any peace officer shall stop immediately and lay to, or maneuver in such a way as to permit the peace officer to come aboard or alongside. The operator may be ordered ashore to correct any unlawful condition, issued a written warning or written repair order or issued a citation for any violation of this chapter.
- D. An operator of a watercraft who wilfully flees or attempts to elude a pursuing law enforcement officer issuing an order pursuant to subsection C of this section is guilty of a class 5 felony. The law enforcement watercraft shall be appropriately marked to show that it is an official law enforcement watercraft.
- E. In the enforcement of this chapter, sections 13-2506 and 13-3903 apply.
- F. Each failure to obey an order or to comply with a warning order issued under subsection C of this section shall constitute a separate offense punishable as a separate violation of this chapter.
- G. A person is guilty of a class 6 felony who knowingly removes, defaces, obliterates, changes, alters or causes to be removed, defaced, obliterated, changed or altered a factory, engine, serial, outdrive, lower unit, power trim or hull identification number or mark on a watercraft.
- H. A person is guilty of a class 2 misdemeanor who:
 - 1. Knowingly displays or has in the person's possession a fictitious, stolen, revoked or altered certificate of number, department issued number or annual decal.
 - 2. Lends to or knowingly permits the use of the person's certificate of number, department issued number or annual decal on a watercraft for which those items have not been issued.
- I. On receipt of notice of conviction of a person under subsection G or H of this section, the department may revoke the numbers and decals issued to the watercraft that was involved in the violation and any other watercraft owned by the person convicted.

5-392. Seizure and forfeiture of watercraft

- A. Peace officers, in the manner provided in title 13, chapter 39:
 - 1. May seize any watercraft and its trailer if the watercraft displays a fictitious, falsified or

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

altered number or annual decal, or an annual decal from which the accountability or expiration numbers have been intentionally removed or partially removed. This paragraph does not apply to a boat owner or an authorized agent who removes decals or boat numbers for routine maintenance or repair.

2. May seize for forfeiture any watercraft which has had a manufacturer's hull identification number, mark or label or any engine, outdrive, lower unit or power trim number intentionally removed, partially removed, falsified or altered.
- B.** Allocation of watercraft seized for forfeiture pursuant to subsection A, paragraph 2 of this section shall follow the provisions of section 13-4315, except that if the forfeited property is sold by public or otherwise commercially reasonable sale the expenses of keeping and selling the property and the amount of all valid interests established by claimants shall first be paid out of the proceeds of the sale and the balance shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

5-393. Inspection for stolen watercraft; violation; classification

- A.** For purposes of enforcing this chapter or locating stolen watercraft or parts of watercraft, peace officers may inspect watercraft to examine the hull identification number, manufacturer's label, outdrive, lower unit or power trim number, or the annual decal or state issued number in a public marina, a storage, repair, sales, leasing or rental lot or facility or a salvage yard or other similar location or establishment and may inspect the registration, title and certificate of number of the watercraft to establish the rightful ownership or possession of the watercraft.
- B.** Inspections shall be conducted at a time and in a manner so as to minimize any unreasonable interference with or delay of the use of the watercraft or the operation of the business where the watercraft is located.
- C.** A person who refuses to permit an inspection under this section is guilty of a class 1 misdemeanor.

5-399. Towing companies

- A.** If a towing company tows a watercraft, the towing company shall provide written notification by mail to the owner and lienholder, if known, of the watercraft's location. The towing company shall obtain the owner and lienholder information pursuant to section 5-324.
- B.** If the watercraft's owner or lienholder, if known, does not remove the watercraft from the towing company's premises within fifteen days of mailing of notice under subsection A of this section, the towing company shall:
1. Report the watercraft on forms prescribed by the director of the Arizona game and fish department.
 2. Submit the report to the director of the Arizona game and fish department.

5-399.01. Abandoned watercraft; notice of intent to transfer ownership

- A.** On receipt of a report as required by this article, the director shall determine the names and addresses of the owner and lienholder, if known, or any other person identified on the department's record who may have an interest in the watercraft by either:
1. Searching the department records.
 2. Asking the watercraft registration agency of another state if the watercraft is registered in that state.
- B.** On receipt of information from reports pursuant to section 5-399 and after determining the names and addresses of the owner and lienholder, if known, or any other person identified on

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

the department's record who may have an interest in the watercraft, the director shall notify all interested persons by mail within five business days for a watercraft with a record in this state or within thirty days for all other watercraft. The notice shall include:

1. A complete description of the watercraft.
 2. A notice of intent to transfer ownership of the watercraft to the towing company in possession of the watercraft if within thirty days from the date indicated in the notification by the department the owner or lienholder, if known, or a person who has an interest in the watercraft does not notify the department of the owner's, lienholder's, if known, or person's interest in the watercraft and claim the watercraft.
 3. The watercraft's hull identification number.
 4. The state issued registration number assigned to the watercraft.
 5. The place from which and date the watercraft was towed.
 6. The storage location of the watercraft.
- C. If the records of the department or out of state jurisdiction do not disclose the names and addresses of the owner and lienholder, if any, or any other person identified on the department's record who may have an interest in the watercraft, or if the notice is returned marked unclaimed or address unknown, the department shall publish a notice of the intent of the director to transfer ownership of the towed watercraft pursuant to this article once in a newspaper or other publication of general circulation in the county in which the watercraft was towed. The published notice shall include a statement of the intent of the director to transfer ownership of the watercraft after ten days of the published notice and the department shall make available to the public a complete description of abandoned watercraft subject to transfer of ownership.
- D. The towing company that filed the report shall notify the director within twenty-four hours and in the manner prescribed by the director if the watercraft is released or returned or redeemed or repossessed by the lawful owner or lienholder, if any, or any other known person who is identified on the department's record who may have an interest in the watercraft.

5-399.02. Unclaimed watercraft; transfer of ownership; violation; classification

- A. If a watercraft remains unclaimed at the expiration of the deadlines prescribed in section 5-399.01, subsections B and C, the director shall make an inquiry to determine if the watercraft is stolen. On receiving notice that the watercraft has not been reported stolen, the director may transfer ownership of the watercraft to the towing company free and clear of all liens or encumbrances on compliance with this article.
- B. An application for transfer of ownership shall be completed and signed by the towing company or authorized agent of the towing company and shall contain a certified statement that includes the following:
1. As of the date of application, no person has presented proof of ownership or proof of interest in the watercraft and entered into an agreement for the release or return of the watercraft.
 2. The towing company is currently in possession of the watercraft.
- C. This state and its agencies, employees and agents are not liable for relying in good faith on the contents of the reports or affidavits as prescribed by this article.
- D. If a towing company complies with this article, the towing company in possession of a watercraft is not liable for obtaining a transfer of ownership of the watercraft.
- E. A towing company that obtains watercraft pursuant to this article shall maintain records of all of the following:
1. The request made pursuant to section 5-324.

**TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS**

2. The notification provided pursuant to section 5-399.
 3. The application for transfer of ownership pursuant to this section.
 4. Any documents pertaining to ownership transfer of abandoned watercraft that the director deems necessary.
- F.** A towing company shall maintain the records prescribed by subsection E of this section for three years from the date the ownership of the watercraft is transferred. The records may be audited by any law enforcement officer or employee of the department during normal business hours.
- G.** A tower who fails to maintain records as prescribed in this section is guilty of a class 2 misdemeanor.

5-399.03. Abandoned watercraft processing rules; fees

The department may:

1. Adopt rules to carry out the requirements of this article.
2. Establish fees to implement this article.

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.

GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 7, Heritage Grants



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 8, 2021

SUBJECT: GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 7, Heritage Grants

Summary:

This Five Year Review Report (5YRR) from the Game and Fish Commission (Commission) relates to two rules in Title 12, Chapter 4, Article 7, regarding Heritage Grants. In the previous 5YRR for these rules, which the Council approved in April 2016, the Commission stated it would amend the rules in Article 7 by combining them into R12-4-702 and submit a Notice of Final Rulemaking to the Council by October 2017. In this 5YRR, the Commission indicates that it amended the rules by Notice of Final Rulemaking in August 2016.

Proposed Action

The Commission does not propose to take any action on the rules under review.

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:**

For the two rules under review, the estimated economic, small business, and consumer impact is the same as stated in the final rulemaking package that the Council approved on August 2, 2016.

Stakeholders include department staff associated with reviewing and scoring proposals and administration of the Heritage Grant program, applicants applying for Heritage Grant funding, and grant participants awarded Heritage Grant funding.

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 believes the rules impose the least burden and cost on regulated persons.

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 states that the rules under review are clear, concise, and understandable.

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

Yes. The Commission states 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 under review 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 there are no corresponding federal laws to the rules under review, which are based on state law.

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 indicates that the rules under review do not require a permit, license, or agency authorization.

11. Conclusion

Council staff finds that the Commission submitted an adequate report that meets the requirements of A.R.S. § 41-1056(A). While Council staff recommends approval of this report, Council staff notes that the Commission mentions that it will examine the possible redundancy between the Article 7 rules and A.R.S. Title 41, Chapter 24 (Solicitation and Award of Grants). The Commission notes that possible outcomes could range from small revisions to the current rules to repeal of the rules. Therefore, Council staff encourages the Council to discuss with the Commission its timeframe for examining possible redundancies, and if they are found, when the Commission could possibly amend or repeal these rules.



February 20, 2021

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 7. Heritage Grants

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 7. Heritage Grants which is due on February 28, 2021.

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 black ink, appearing to read "Ty E. Gray".

Ty E. Gray
Director

ARIZONA GAME AND FISH COMMISSION

ARTICLE 2. HERITAGE GRANTS

- 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 statute: A.R.S. §§ 17-297 and 17-298

- 2. Objective of the rule, including the purpose for the existence of the rule.**

For R12-4-701. Heritage Grant 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 12 A.A.C. Chapter 4, Article 7. The rule was adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules.

R12-4-702. General Provisions; Heritage Grant Fund Requirements, the objective of the rule is to establish the general provisions that apply to all grant fund applicants. The rule was adopted to provide grant applicants with the information necessary to submit an application for a grant and ensure efficient administration of the application and monitoring processes.

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

For R12-4-701. Heritage Grant 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. To the extent that the Department is aware, there have been no problems with enforcement. Providing definitions for the unique terms used in Article 4 assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 4 rules.

For R12-4-702. General Provisions; Heritage Grant Fund the rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rules are understandable and applicable. The Department believes the data indicates the rule is effective.

- 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.**

For R12-4-701. Heritage Grant Definitions and R12-4-702. General Provisions; Heritage Grant Fund, 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 17 and Title 41, Chapter 24, and 12 A.A.C. 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 R12-4-701. Heritage Grant Definitions and R12-4-702. General Provisions; Heritage Grant Fund, the rules are enforced as written and the Department is not aware of any problems with the enforcement of the rules.

6. Clarity, conciseness, and understandability of the rule.

For R12-4-701. Heritage Grant Definitions and R12-4-702. General Provisions; Heritage Grant Fund, the rules are clear, concise, and understandable. The rules are logically organized and generally written in the active voice so they will be understood by the general public.

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.

For R12-4-701. Heritage Grant Definitions and R12-4-702. General Provisions; Heritage Grant Fund, no written criticisms were received.

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.

For R12-4-701. Heritage Grant Definitions and R12-4-702. General Provisions; Heritage Grant Fund, the rules have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on August 2, 2016.

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:

- Notice of Rulemaking Docket Opening: 16 A.A.R. 825, April 15, 2016.
- Notice of Proposed Rulemaking: 16 A.A.R. 810, April 15, 2016.
- Public Comment Period: April 15, 2016 through May 15, 2016.
- G.R.R.C. approved the Notice of Final Rulemaking at the August 2, 2016 Council Meeting.
- Notice of Final Rulemaking: 16 A.A.R. 2200, August 19, 2016.

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.

The rules establish the general provisions that apply to all grant fund applicants. The rules were adopted to provide grant applicants with the information necessary to apply for a grant and ensure efficient administration of the application and monitoring processes. Heritage Fund money comes from Arizona Lottery ticket sales and was established by voter initiative in 1990. The Heritage Fund Grant Program was established by the Arizona Game and Fish Department in 1992 as part of the overall Heritage Fund program and was initially developed as a way to promote outreach, enhance important partnerships, and generate fresh approaches in support of the Department's mission. From 1992 through the 2020 Heritage Grant Cycle, the Department has awarded 893 Heritage Grants. Awarded grant funds total \$17,165,471 with grantee match contributions of \$9,772,922, for a combined total benefit to the public of \$26,938,393. Because the Department receives no state tax dollars to cover its operating budget, the Heritage Fund is critical to recovering or sustaining Arizona's unique native wildlife and to managing more than 800 native species. Applicants and successful grant recipients bear the administrative costs of complying with the provisions, including provisions on the disposal of equipment acquired with grant funding, and the administrative burdens of monitoring and reporting to the Department regarding the use of those funds. To protect Heritage Fund money from potential misuse, the Department must require information and documentation sufficient to ensure that the person submitting the application is an eligible applicant and the proposed project is eligible for grant funds. It is important to note that the requirements established under this Article apply only to an eligible applicant who elects to apply for a Heritage Grant. The Department believes the rules impose the least burdens and costs to persons regulated by the rule.

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.

Five-year Review Report Criteria Continued...

For R12-4-701. Heritage Grant Definitions and R12-4-702. General Provisions; Heritage Grant Fund, federal law is not directly applicable to the subject of the rules because the rules are based on state law.

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.

For R12-4-701. Heritage Grant Definitions and R12-4-702. General Provisions; Heritage Grant Fund, 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 is necessary for the rules.

However, the Department intends to examine the possible redundancy between Article 7 rules and A.R.S. Title 41, Chapter 24. Solicitation and Award of Grant statutes to determine the efficiency of these rules when compared to other grants offered by the Department through these statutes. Possible outcomes could range from small revisions to the current rules to further align the rules with the grant statutes to the repeal of these rules.

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 7. HERITAGE GRANTS

R12-4-701, R12-4-702, R12-4-703, R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

Heritage Fund money comes from Arizona Lottery ticket sales and was established by voter initiative in 1990. The people of Arizona believe it is in the best interest of the general economy and welfare of Arizona and its citizens to set aside adequate state funds on an annual basis to preserve, protect and enhance Arizona's natural and cultural heritage, wildlife, biological diversity, scenic wonder and environment and provide new opportunities for outdoor recreation in Arizona. The Heritage Grant Program was established by the Arizona Game and Fish Department in 1992 as part of the overall Heritage Fund program and was initially developed as a way to promote outreach, enhance important partnerships, and generate fresh approaches in support of the Department's mission. Heritage funding goes toward conservation efforts such as protecting endangered species, educating students and the general public about wildlife and the outdoors, and creating new opportunities for outdoor recreation. From 1992 through the 2015 Heritage Grant Cycle, the Department has awarded 789 Heritage Grants. Awarded grant funds total \$15,376,996 and when combined with grantee match commitments, the total benefit to the public is \$22,775,782. In 2015 alone, a total of 25 grant projects were funded for a total of \$408,092. When combined with grantee match commitments, the total benefit to the public is \$1,040,546. Because the Department receives no state tax dollars to cover its operating budget, the Heritage Fund is critical to recovering or sustaining Arizona's unique native wildlife and to managing more than 800 native species.

The Arizona Game and Fish Commission proposes to amend its Article 7 rules, governing Heritage Grants, to enact amendments developed during the preceding Five-year Review.

For R12-4-701. Heritage Grant 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 12 A.A.C. Chapter 4, Article 7. The rule was adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules. The Commission proposes to amend the rule to add non-governmental organizations (NGOs) to the definition of "eligible applicant" to expand opportunities for Heritage Grant funds to additional applicants. The Commission proposes to amend the rule to remove the stipulation that an eligible applicant cannot have a Heritage Grant in extension as this language is more regulatory than descriptive, does not belong in the definition of "eligible applicant" and is addressed under R12-4-702. The Commission proposes to amend the rule to remove the stipulation that an eligible applicant who is a nonprofit organization must be sponsored by a public agency to reduce the costs and burdens on nonprofits and state agency sponsors. The Commission

believes this amendment will make the application and grant process more efficient by removing administrative levels. The Commission also proposes to amend the rule to include "administrative sub-unit" in the definition of "public agency" to increase consistency between Article 7 rules. In addition, the Commission proposes to amend the rule to repeal the definition of "sensitive elements" as the rule that referenced the term is recommended for repeal and the term will no longer be referenced in the amended rules.

For R12-4-702. General Provisions, the objective of the rule is to establish the general provisions that apply to all grant fund applicants. The rule was adopted to provide grant applicants with the information necessary to successfully apply for a grant and ensure efficient administration of the application and monitoring processes. The Commission proposes to amend the rule to clarify potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat to ensure the citizens of Arizona benefit from the use of Heritage Grant funds. The Commission proposes to amend the rule to allow a participant to deposit Heritage Grant funds in an interest bearing account, provided the earned interest is either used to further the project or returned to the Department upon completion of the project, to reduce the burden on the regulated community. The Commission proposes to amend the rule to prohibit a participant from comingling grant funds with any other funds to protect Heritage Grant funds money from potential misuse. The Commission also proposes to streamline and restructure the rule to incorporate the requirements established under R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 to provide those requirements in chronological order for ease of understanding and to make the rule more concise. As a result of this amendment, R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 will be repealed. In addition, the Commission proposes to amend the rule to allow the Department to extend the project period to complete the final closure documents to reduce the costs and burdens to persons regulated by the rule and the Department.

For R12-4-703. Heritage Grant Program Funds, the objective of the rule is to establish the specific requirements that a project proposal must meet in order to be considered for the various Heritage Grant Program funds. The rule was adopted to provide grant applicants with specific guidance for goals and objectives listed within each grant sub-category. The Commission proposes to repeal the rule to provide the Department with greater flexibility in granting Heritage Funds in compliance with the manner prescribed under A.R.S. § 17-298.

For R12-4-704. Grant Application, the rule establishes the application process, criteria, and information that an applicant is required to include with a completed application. The rule was adopted to provide applicants with guidance on applying for Heritage Grants. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding. As a result of the five-year review, the Commission does not intend to incorporate the requirement that a nonprofit provide proof of their tax exempt status. The Department determined this requirement is unnecessary because an applicant is not required to have tax exempt status in order to qualify for a Heritage Grant.

For R12-4-705. Review of Proposals, the objective of the rule is to establish the Department's guidelines for the review of proposals. The rule was adopted to notify the regulated community that grant awards are made available through a competitive application process due to Heritage Fund availability. Applications are not evaluated, compared, or scored against each other, but are reviewed and judged on the basis of their compatibility with the goals, needs, and priorities of the Arizona Game and Fish Department, project feasibility, merit, and usefulness of results consistent with the conservation and management of wildlife and their habitats. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-706. State Historic Preservation Office Review, the objective of the rule is to notify applicants that Heritage Grant funds shall not be released until after the Department has consulted with the State Historic Preservation Office and it is determined the project proposal will not have a negative impact on the State's prehistorical, historical, architectural or culturally significant values. The rule was adopted to ensure compliance with established State Historic Preservation Act statutes, (*A.R.S.* §§ 41-861 through 865) and the Arizona Antiquities Act (*A.R.S.* §§ 41-841 through 844). These statutes require that specific steps be taken to protect and preserve such properties and or discoveries and are a condition and precedent to the award of any grant funds. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-707. Grant Agreement, the objective of the rule is to establish the minimum terms and conditions that a grant participant must comply with. The rule was adopted to provide applicants notice of the basic terms and conditions that must be met when awarded a Heritage Grant. This allows the person to decide whether they can comply with the minimum requirements before applying for a Heritage Grant. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-708. Reporting and Recordkeeping Requirements, the objective of the rule is to establish the reporting and record keeping requirements that a participant must comply with. The rule was adopted to provide applicants notice of the basic recordkeeping and reporting requirements that must be met to ensure compliance with the agreement. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

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

The Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have little or no impact on the regulated community. Amendments are proposed to expand opportunity and reduce the burdens and costs to persons regulated by the rule. The amended rules are more concise and easier for persons regulated by the rule to navigate.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

The Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have little or no impact on the regulated community. The Commission is not aware of any harm resulting from conduct by persons regulated by the Heritage Grant rules. Amendments are proposed to expand opportunity and reduce the burdens and costs to persons regulated by the rule. The Commission believes that the Department's costs to administer the Heritage Grant Programs, including time expended on Department resources, will not be unduly burdened by the rulemaking.

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

The Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have little or no impact on the regulated community. Amendments are proposed to expand opportunity and reduce the burdens and costs to persons regulated by the rule. The Commission believes the number of applicants may increase due to removing the requirement that a nonprofit applicant obtain sponsorship from a government agency and by allowing an NGO to directly apply for a Heritage Grant. In addition, the Commission anticipates all applicants will benefit from amendments that restructure and streamline Heritage Grant requirements. The Commission foresees that more applicants will apply for grants and this may increase the Department's burden with more proposals to review; however it is anticipated that this will also provide more support and promotion of the Department's mission. Even though the Department anticipates receipt of additional applicants, the Commission believes the changes made to the Heritage Grant process will not place an undue burden of time or cost on the Department.

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

The Commission's intent in proposing the amendments indicated in this rulemaking is to benefit the regulated community, members of the public, and the Department by streamlining and restructuring the rule. The rulemaking will benefit the Department and those governmental entities applying for Heritage Grants by improving the accuracy, clarity, and understandability of the rules. The Commission proposes additional amendments designed to reduce burden and costs to persons regulated by the rule, where practical. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will have little or no impact on political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Therefore, the Commission has determined 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: Marty Herrera, Heritage Fund Administrator
Address: Arizona Game and Fish Department
5000 W. Carefree Highway

Phoenix, AZ 85086

Telephone: (623) 236-7527

Fax: (623) 236-7110

E-mail: MHerrera@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

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

Persons who will be directly affected by the rulemaking include:

Department staff associated with reviewing and scoring proposals and administration of the Heritage Grant Program

Applicants applying for Heritage Grant funding

Grant participants awarded Heritage Grant funding

Heritage funding goes toward conservation efforts such as protecting endangered species, educating students and the general public about wildlife and the outdoors, and creating new opportunities for outdoor recreation. In the 2015 grant cycle, a total of 48 Heritage Grant applications were received and, of the \$432,000 available, \$408,092 was awarded as follows: Environmental Education (EE) of the four applications received, three applicants were awarded EE grants totaling \$23,591 of the \$24,000 available; Outdoor Education (OE) of the six applications received, five applicants were awarded OE grants totaling \$7,920 of the \$8,000 available; Schoolyard Habitat (Schoolyard) of the eleven applications received, five were awarded Schoolyard grants totaling \$37,500 of the \$37,500 available; Urban Wildlife (Urban) of the ten applications received, five applicants were awarded Urban grants totaling \$112,500 of the \$112,500 available; Public Access (Access) of the three applications received, three applicants were awarded Access grants totaling \$50,000 of the \$50,000 available; and Identification, Inventory, Acquisition, Protection and Management (IIAPM) of the fourteen applications received, four applicants were awarded IIAPM grants totaling \$176,581 of the \$200,000 available.

Applicants and successful grant recipients bear the administrative costs of complying with the provisions, which includes the disposal of equipment acquired with grant funding, and the administrative burdens of monitoring and reporting to the Department regarding the use of those funds. The Commission estimates the costs and burdens resulting from the rulemaking for both applicants and recipients are not significant and do not deter applications. The rulemaking is beneficial to the regulated community and the public directly impacted, as they enforce the beneficial use of the grants, while protecting them from misuse. All Heritage Grant applications are evaluated through the Department's Grant Prioritization Process, and the processing is the same for all applications approved for funding, regardless of the amount or type of project. Once funded, projects are managed essentially the same even though the funding may vary greatly among projects. The Commission anticipates the rulemaking will have a significant and

positive impact to the regulated community. The public will benefit by the conservation, enhancement, and restoration of Arizona's diverse wildlife resources and habitats for present and future generations.

The Commission anticipates the rulemaking will benefit the Department and those applicants applying for Heritage Grants by improving the accuracy, clarity, and understandability of the rules.

The Commission anticipates the amendment that includes NGOs in the definition of "eligible applicant" will benefit these organizations by providing them with an opportunity to directly apply for and be awarded a Heritage Grant. The Commission believes the rulemaking may increase the number of applicants, but will not affect the dollars available for grants or expended in the state.

The Commission anticipates removing the stipulation that a nonprofit organization must be sponsored by a public agency will benefit nonprofits by reducing the costs and burdens associated with finding and maintaining an administrative relationship with a governmental agency sponsor. Typically, a sponsor will take a portion of the awarded grant funds to offset the costs of administering the grant. How much the proposed amendment will actually affect costs and in turn the amount of funding requested is not known at this time. The Commission believes the rulemaking will further a nonprofit's project by allowing the nonprofit to apply all grant funds towards a proposed project.

The Commission anticipates nonprofit organizations will benefit from the rulemaking by simplifying the paperwork required from the nonprofit. The Commission believes requiring a nonprofit to provide proof of their tax exempt status is unnecessary because an applicant is not required to have tax exempt status in order to qualify for a Heritage Grant.

The Commission anticipates the amendment that clarifies potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat will benefit grant applicants. The information is being added to the rule so that Heritage Grant applicants will be better informed about the types of projects eligible for grant funding. The Department's Grant Application Manual, which the Department currently publishes and provides to applicants, already contains this information.

The Commission anticipates the amendment that allows a participant to deposit Heritage Grant funds in an interest bearing account will reduce the burden to persons regulated by the rule. The Commission anticipates the amendment may increase the Department's administrative burden, but believes the Department's costs to administer the Heritage Grant Programs, including time expended on Department resources, will not be unduly burdened by the rulemaking.

The Commission anticipates the amendment that prohibits a participant from comingling Heritage Grant funds with any other funds will benefit the Department and the public by protecting Heritage Grant funds from potential misuse.

The Commission anticipates the amendment that allows the Department to extend the project period to complete the final closure documents will benefit both the Department and participants. The project period end date is specified in the Grant Agreement. A participant who fails to comply with the agreement will not receive the final 10% of the grant funds and may not be eligible for another grant for up to five years. When

a participant fails to comply with the agreement the Department expends resources in seeking recovery of grant monies awarded and classifying the participant as ineligible for another grant for up to five years.

The Commission anticipates repealing R12-4-703 will benefit the Department by providing greater flexibility in granting Heritage Funds in compliance with the manner prescribed under A.R.S. § 17-298. The Department's Grant Application Manual, which the Department currently publishes and provides to applicants, contains detailed information regarding the types of projects that will be funded each grant cycle. Thus, the Commission anticipates the rulemaking will have little or no impact to persons regulated by the rule.

The Commission anticipates incorporating the requirements of R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 into R12-4-702 will benefit grant applicants by providing Heritage Grant requirements in one concise overarching rule.

It is important to note that the requirements established under this Article apply only to an eligible applicant who elects to apply for the Heritage Grant.

The Commission believes that once the proposed amendments indicated in the rulemaking are made, the rules will impose the least burden and costs to persons regulated by the rule.

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. 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 Commission anticipates the rulemaking will impact the Department due to Heritage Grant administration requirements; however, this amendment will not require new full-time employees as the Department already has an administrative process in place. The Commission anticipates the rulemaking will have little or no impact on other state agencies affected by the implementation and enforcement of the rulemaking.

(b) Probable costs and benefits to political subdivision of this state directly affected by implementation and enforcement of the final rule making.

The Commission anticipates the rulemaking will affect those agencies and governmental entities eligible to apply for and receive Heritage Grants. The agencies that have submitted applications to the Department in the past include representative organizations from all of the types of government that are eligible to receive funding. Grants from the Heritage Program have been distributed to nearly all areas in the state and to all levels of government. The Commission anticipates the rulemaking will benefit all public agencies and governmental entities applying for a Heritage Grant.

(c) Probable costs and benefits to businesses directly affected by the final rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the final rule making.

The Commission anticipates the rulemaking will have little or no impact on businesses, revenues, or payroll expenditures. The Commission anticipates the rulemaking will not impact organizations that employ individuals who are listed as participant contacts for Heritage-funded projects. Grants awarded from the Heritage Fund result in an average expenditure of one million dollars annually (includes grantee match commitments). Many of these funds are expended to purchase goods and services from businesses in Arizona. Some of the types of businesses who receive the benefit of these funds are construction companies, engineering firms, companies that supply high-tech equipment and computers, testing laboratories, scientific supply houses, lumber companies, archaeologists, sign companies, paper products companies, helicopter/flight service companies, fence companies, and landscaping companies. The expenditure of funds from the grants that are approved from the Heritage Fund will continue to have a very positive financial affect in terms of providing additional revenue opportunities for many businesses in the state. There will not be any additional costs or reduction in revenues to businesses resulting from these rule amendments, and there is no anticipated effect on the revenues or payroll expenditures of employers who are subject to or affected by the 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 rulemaking.

The Commission anticipates the rulemaking will have little or no impact on private or public employment in this state.

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

(a) Identification of the small businesses subject to the proposed rulemaking.

The Commission anticipates the rulemaking will have little or no impact on small businesses, revenues, or payroll expenditures. The Commission anticipates the rulemaking may impact small businesses that apply for or participate in Heritage Grant projects. A review of previous grant cycle applications indicates there are significant numbers of businesses or small businesses that benefit from awarded Heritage Grants, through purchases by grantees.

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

The Commission anticipates the rulemaking will not create any significant additional requirements for compliance and will not create a significant additional cost to small businesses.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission anticipates any additional requirements for compliance resulting from the rulemaking will have little or no impact on small businesses.

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

The Commission anticipates the rulemaking will not affect private persons or consumers.

6. Statement of the probable effect on state revenues.

The Commission anticipates the rulemaking will have little or no impact on 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 rationale for not using the nonselected alternatives.

The Commission has determined that there are no less intrusive or less costly alternative methods of achieving the objectives of the rulemaking. The Commission holds that the benefits of the rulemaking outweigh any costs.

8. 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.

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from agency staff who administer and enforce rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Heritage Grant reports, other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. This rulemaking includes rules that govern Heritage Grants. The subjects the rules address are based on fund administration rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

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 Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 7. In its review, the team considered all comments from agency staff that administer and enforce Article 7 rules, historical data, current processes and environment, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the Heritage Grant Program or the Department's grant objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

ARTICLE 7. HERITAGE GRANTS

R12-4-701. Heritage Grant Definitions

In addition to the definitions provided under A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

“Administrative subunit” means a branch, chapter, department, division, section, school, or other similar divisional entity of an eligible applicant. For example, an individual:

Administrative department, but not an entire city government;

Field office or project office, but not an entire agency; or

School, but not an entire school district.

“Eligible applicant” means any public agency, non-governmental organization, or nonprofit organization that meets the applicable requirements of this Article.

“Facilities” means any structure or site improvements.

“Fund” means the Arizona Game and Fish Commission Heritage Fund, established under A.R.S. § 17-297.

“Grant agreement” means a document that details the terms and conditions of a grant project.

“Grant effective date” means the date the Department Director signs the Grant Agreement.

“In-kind” means contributions other than cash, which include individual and material resources that the applicant makes available to the project, e.g. a public employee’s salary, volunteer time, materials, supplies, space, or other donated goods and services.

“Participant” means an eligible applicant who has been awarded a grant from the Heritage Fund.

“Project” means an activity, or series of related activities, or services described in the specific project scope of work and results in specific end products.

“Project period” means the time during which a participant shall complete all approved work and related expenditures associated with an approved project.

“Public agency” means the federal government or any federal department or agency, an Indian tribe, this state, all state departments, agencies, boards, and commissions, counties, school districts, public charter schools, cities, towns, all municipal corporations, administrative subunits, and any other political subdivision.

“Publicly held lands” means federal, public, and reserved land, State Trust Land, and other lands within Arizona that are owned, controlled, or managed by the federal government, a state agency, or political subdivision.

“Term of public use” means the time period during which the project or facility is expected to be maintained for public use.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

R12-4-702. General Provisions; Heritage Grant Fund Requirements

A. The Department, in its sole discretion, may make Heritage Fund Grants available for projects that:

ARTICLE 7. HERITAGE GRANTS

1. Are located in Arizona or benefit Arizona wildlife or its habitat; and
 2. Meet the criteria established in the Heritage Grant application materials.
- B.** The Department shall:
1. Provide public notice of the time, location, and due date for application submission; and
 2. Furnish materials necessary to complete the application.
- C.** An applicant seeking Heritage Grant funding shall submit to the Department a Heritage Fund Grant application according to a schedule of due dates determined by the Director. An applicant shall provide the following information on the Heritage Grant application form:
1. The name of the applicant;
 2. Any county and legislative district where the project will be developed or upon which the project will have a direct impact;
 3. The name, title, mailing address, e-mail address, and telephone number of the individual responsible for the day-to-day management of the proposed project;
 4. Identification of the application criterion established in the Heritage Grant application materials;
 5. A descriptive project title;
 6. The name of the site, primary location, and any other locations of the project;
 7. Description of the:
 - a. Scope of work and the objective of the proposed project,
 - b. Methods for achieving the objective, and
 - c. Desired result of the project;
 8. The beginning and ending dates for the project;
 9. The resources needed to accomplish the project, including grant monies requested, and, if applicable, evidence of secured matching funds or contributions; and
 10. Any additional supporting information required by the Department.
 11. Signature and date. The person signing the grant application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the Grant Agreement on behalf of the applicant.
- D.** A person applying for multiple projects shall submit a separate application for each project.
- E.** An applicant shall demonstrate ownership or control of the project. Ownership or control may be demonstrated through fee title, lease, easement, or agreement. For all other project types related to sites not controlled by an applicant, an applicant shall provide written permission from the property owner authorizing the project activities and access. The applicant's proof of ownership or control or written permission shall demonstrate:
1. Permission for access is not revocable at will by the property owner, and
 2. Public access will be granted to the project site for the life of the project, unless the purpose of the project proposal is to limit access.
- F.** Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project's compatibility with the priorities of the Department, as approved by the Commission.

ARTICLE 7. HERITAGE GRANTS

- G.** The Department may require an applicant to modify the application prior to awarding a Heritage Grant, if the Department determines that the modification is necessary for the successful completion of the project.
- H.** When applicable, the Department shall not release Heritage Grant funds until after the Department has consulted with the State Historic Preservation Office regarding the proposed project's potential impact on historic and archaeological properties and resources.
- I.** The Department shall notify an applicant in writing of the results of the applicant's submission and announce Heritage Grant awards at a regularly scheduled open meeting of the Commission.
- J.** A participant shall:
 - 1. Sign the Grant Agreement before the Department transfers any grant funds.
 - 2. Deposit transferred Heritage Grant funds in a dedicated account carrying the name and number of the project. In the event the funds are deposited in an interest-bearing account, any interest earned shall be:
 - a. Used for the purpose of furthering the project, with prior approval from the Department; or
 - b. Remitted to the Department upon completion of the project.
 - 3. Complete the project as specified under the terms and conditions of the Grant Agreement.
 - 4. Use awarded Heritage Grant funds solely for the project described in the application and as approved by the Department.
 - 5. Bear full responsibility for performance of its subcontractors to ensure compliance with the Grant Agreement.
 - 6. Pay all costs associated with the operation and maintenance of properties, facilities, equipment, services, publications, and other media funded by a Heritage Grant for the term of public use as specified in the Grant Agreement.
 - 7. Submit records that substantiate the expenditure of Heritage Grant funds. In addition, each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and any other records relating to the acquisition and performance of the contract for a period of five years from the end date of the project period. The Department may inspect and audit participant and subcontractor records as prescribed under A.R.S. § 35-214. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records.
 - 8. Allow Department employees or agents to conduct inspections and reviews:
 - a. To ensure compliance with all terms and conditions established under the Grant Agreement.
 - b. Before release of the final payment.
 - 9. Give public acknowledgment of Heritage Fund grant assistance for the term of public use of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources. The participant may include the cost of this signage as part of the original project. The participant is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include Heritage Fund grant funding acknowledgment on any publicly available or accessible products resulting from the project.
- K.** A participant shall not:

ARTICLE 7. HERITAGE GRANTS

1. Begin a project described in the application until after the grant effective date.
 2. Use Heritage Grant funds for the purpose of producing income unless authorized by the Department. A participant shall use all income generated to further the purpose of the approved project or surrender the income to the original funding source.
 3. Comingle Heritage Grant funds with any other funds.
 4. Use Heritage Grant funds to pay the salary of any public agency employee. A participant may use a public agency's employee's time as in-kind match for the project specified in the Grant Agreement.
- L.** The parties may amend the terms of the Grant Agreement by mutual written consent. The Department shall prepare any approved amendment in writing, and both the Department and the Grantee shall sign the amendment.
- M.** The Department and the participant may amend the Grant Agreement during the project period. A participant seeking to amend the Grant Agreement shall submit a written request that includes justification to amend the Grant Agreement. The Department shall prepare any approved amendment in writing and both the Department and the participant shall sign the amendment.
- N.** A participant shall submit project status reports, as required in the Grant Agreement. If a participant fails to submit a project status report, the Department may not release any remaining grant monies until the participant has submitted all past due project status reports. The project status report shall include the following information, as applicable:
1. Progress in completing approved work;
 2. Itemized, cumulative project expenditures;
 3. A financial accounting of:
 - a. Heritage Grant Funds,
 - b. Matching funds,
 - c. Donations, and
 - d. Income derived from project funds;
 4. Any delays or problems that may prevent the on-time completion of the project; and
 5. Any other information required by the Department.
- O.** At the end of the project period and for each year until the end of the term of public use, a participant shall:
1. Certify compliance with the Grant Agreement, and
 2. Complete a post-completion report form furnished by the Department.
- P.** Upon completion of approved project elements, if a balance of awarded Heritage Grant funds remains, the participant may:
1. Use the unexpended funds for an additional project consistent with the original scope of work, when approved by the Department; or
 2. Surrender the unexpended funds to the Department.
- Q.** Upon completion of the project a participant shall:
1. Surrender equipment with an acquisition cost of more than \$500 to the Department upon completion, or

ARTICLE 7. HERITAGE GRANTS

2. Use equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement.
- R.** A participant may request an extension beyond the approved project period by writing to the Department.
1. Requests for an extension shall be submitted by the participant no later than 30 days before the end of the project period.
 2. If approved, an extension shall be signed by both the participant and the Department.
- S.** A participant that has a Heritage Grant funded project in extension shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project under extension is completed.
- T.** In addition, the Department may administratively extend the project period for good cause such as, but not limited to, inclement weather, internal personnel changes, or to complete the final closure documents.
- U.** A participant that failed to comply with the terms and conditions of a Grant Agreement shall not apply for, nor be considered for, further Heritage Grants until the participant's project is brought into compliance.
- V.** If a participant is not in compliance with the Grant Agreement, the Department may:
1. Terminate the Grant Agreement,
 2. Seek recovery of grant monies awarded, and
 3. Classify the participant as ineligible for Heritage Fund Grants for a period of up to five years.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND**

5-572. Use of monies in state lottery fund; report

- A. If there are any bonds or bond related obligations payable from the state lottery revenue bond debt service fund, the state lottery revenue bond debt service fund shall be secured by a first lien on the monies in the state lottery fund after the payment of operating costs of the lottery, as prescribed in section 5-555, subsection A, paragraph 1, until the state lottery bond debt service fund contains sufficient monies to meet all the requirements for the current period as required by the bond documents. Debt service for revenue bonds issued pursuant to this chapter shall be paid first from monies that would have otherwise been deposited pursuant to this section in the state general fund. After the requirements for the current period have been satisfied as required by the bond documents, the monies in the state lottery fund shall be expended for the expenses of the commission incurred in carrying out its powers and duties and in the operation of the lottery.
- B. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsection A of this section, ten million dollars shall be deposited in the Arizona game and fish commission heritage fund established by section 17-297.
- C. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsections A and B of this section, five million dollars shall be allocated to the department of child safety for the healthy families program established by section 8-481, four million dollars shall be allocated to the Arizona board of regents for the Arizona area health education system established by section 15-1643, three million dollars shall be allocated to the department of health services to fund the teenage pregnancy prevention programs established in Laws 1995, chapter 190, sections 2 and 3, two million dollars shall be allocated to the department of health services for the health start program established by section 36-697, two million dollars shall be deposited in the disease control research fund established by section 36-274 and one million dollars shall be allocated to the department of health services for the federal women, infants and children food program. The allocations in this subsection shall be adjusted annually according to changes in the GDP price deflator as defined in section 41-563 and the allocations are exempt from the provisions of section 35-190 relating to lapsing of appropriations. If there are not sufficient monies available pursuant to this subsection, the allocation of monies for each program shall be reduced on a pro rata basis.
- D. If the state lottery director determines that monies available to the state general fund may not equal eighty-four million one hundred fifty thousand dollars in a fiscal year, the director shall not authorize deposits to the Arizona game and fish commission heritage fund pursuant to subsection B of this section until the deposits to the state general fund equal eighty-four million one hundred fifty thousand dollars in a fiscal year.
- E. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsections A through D of this section, one million dollars or the remaining balance in the fund, whichever is less, is appropriated to the department of economic security for grants to nonprofit organizations, including faith based organizations, for homeless emergency and transitional shelters and related support services. The department of economic security shall submit a report on the amounts, recipients, purposes and results of each grant to the governor, the speaker of the house of representatives and the president of the senate on or before December 31 of each year for the prior fiscal year and shall provide a copy of this report to the secretary of state.
- F. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsections A through E of this section, and after a total of at least ninety-nine million six hundred forty thousand dollars has been deposited in the state general fund, three million five hundred thousand dollars shall be deposited in the Arizona competes fund established by section 41-1545.01. The balance in the state lottery fund remaining after deposits into the Arizona competes fund shall be deposited in the university capital improvement lease-to-own and bond fund established by section 15-1682.03, up to a maximum of eighty percent of the total annual payments of lease-to-own and bond agreements entered into by the Arizona board of regents.
- G. All monies remaining in the state lottery fund after the appropriations and deposits authorized in this section shall be deposited in the state general fund.
- H. Except for monies expended for debt service of revenue bonds as provided in subsection A of this section, monies expended under subsection A of this section are subject to legislative appropriation.
- I. The commission shall transfer monies prescribed in this section on a quarterly basis.

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.

**TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND**

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

**TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND**

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.

17-296. Definitions

In this article:

1. "Public access" means providing entry to publicly held lands for recreational use where such entry is consistent with the provisions establishing those lands.
2. "Sensitive habitat" means the specific areas within the geographical area historically or currently occupied by a species or community of species in which are found those physical or biological features essential to the establishment or continued existence of the species and which may require special management, conservation or protection considerations.
3. "Endangered species" means a species or subspecies of native Arizona wildlife whose population has been reduced due to any cause whatsoever to such levels that it is in imminent danger of elimination from its range in Arizona, or has been eliminated from its range in Arizona.
4. "Threatened species" means a species or subspecies of native Arizona wildlife that, although not presently in imminent danger of being eliminated from its range in Arizona, is likely to become an endangered species in the foreseeable future.
5. "Candidate species" means a species or subspecies of native Arizona wildlife for which habitat or population threats are known or suspected but for which substantial population declines from historic levels have not been documented.
6. "Urban wildlife" means the wildlife that occurs within the limits of an incorporated area or in close proximity to an urban area that receives significant impact from human use.
7. "Environmental education" means educational programs dealing with basic ecological principles and the effects of natural and man related processes on natural and urban systems and programs to enhance public awareness of the importance of safeguarding natural resources.
8. "Habitat evaluation" means the assessment of the status, condition and ecological value of habitat and subsequent recommendations of management, conservation or other protection measures, or mitigation measures, including but not limited to, recommendation of reasonable alternatives for the proposed projects that might otherwise affect the habitat under assessment.
9. "Habitat protection" means the process of protecting the quality, diversity, abundance, and serviceability of habitats for the purposes of maintaining or recovering populations of Arizona wildlife.

17-297. Arizona game and fish commission heritage fund

- A. The Arizona game and fish commission heritage fund is established consisting of monies deposited from the state lottery fund pursuant to section 5-572 and interest earned on those monies.
- B. The fund shall be administered by the Arizona game and fish commission and is not subject to appropriation and expenditures from the fund are not subject to outside approval notwithstanding any provision of section 17-241 or 17-261 or any other statutory provision to the contrary. Monies received pursuant to section 5-572 shall be deposited directly with the Arizona game and fish commission heritage fund. On notice from the Arizona state game and fish commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
- C. All monies in the Arizona game and fish commission heritage fund shall be spent by the Arizona game and fish commission only for the purposes and in the percentages set forth in this article. In no event shall any monies in the fund revert to the state general fund and monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
- D. The commission shall not use its rights of eminent domain to acquire property to be paid for with money from the Arizona game and fish commission heritage fund.

17-298. Expenditures from fund; purpose and amounts; annual report

- A. Monies received pursuant to section 5-572 shall be spent as follows:
 1. Five per cent on public access, including maintenance and operation expenses.

**TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND**

2. Sixty per cent on the identification, inventory, acquisition, protection and management, including maintenance and operations, of sensitive habitat. At least forty per cent of the monies available under this paragraph shall be spent on the acquisition of sensitive habitat utilized by endangered, threatened and candidate species. The commission may dispose of any lands acquired for use as habitat by an endangered, threatened or candidate species under this paragraph when the species no longer qualifies as an endangered, threatened or candidate species. The Arizona game and fish commission shall dispose of the land in a manner consistent with the preservation of the species of concern. The disposal may include conservation easements and fee simple transfers with associated instruments of protection. The commission shall follow the guidelines established pursuant to section 37-803 relating to the disposition of real property by a state agency. In addition, disposal shall include a written agreement between the commission and the purchaser requiring the purchaser to incorporate management actions to ensure proper maintenance of the species of concern. Management actions may include maintenance of habitat, selective control of nonnative species, maintenance of genetic viability, monitoring of populations and habitat, coordinating conservation activities, funding conservation actions and assessing conservation progress.
 3. Fifteen per cent on habitat evaluation or habitat protection.
 4. Fifteen per cent on urban wildlife and urban wildlife habitat programs.
 5. Five per cent on environmental education.
- B. All monies earned as interest on monies received pursuant to section 5-572 shall be spent only in the percentages and for the purposes described in subsection A of this section or for costs of administering the Arizona game and fish commission heritage fund in such amounts as determined by the Arizona game and fish commission.
- C. On or before December 31 each year the commission shall submit its annual report to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on natural resources and agriculture, or their successor committees. The annual report shall include information on:
1. The amount of monies spent or encumbered in the fund during the preceding fiscal year and a summary of the projects, activities and expenditures relating to:
 - (a) Property acquisition.
 - (b) Identification, inventory, protection and management of sensitive habitat.
 - (c) Habitat evaluation and protection.
 - (d) Urban wildlife.
 - (e) Environmental education.
 - (f) Public access.
 2. The number and location of parcels of property acquired during the preceding fiscal year.
 3. For personal and real properties acquired with fund monies during the preceding fiscal year, the amount of property tax revenue paid to each taxing jurisdiction during the last full tax year prior to acquisition.
 4. The amount of money spent from the fund during the preceding fiscal year for employee personal services.
 5. The number of full-time employees employed in the preceding fiscal year in connection with property acquisition, including survey, appraisal and other related activities.
 6. The total number of full-time employees employed in the preceding fiscal year for the programs listed in subsection A of this section.
 7. A list of the grants awarded during the preceding fiscal year including information on the recipients, purposes and amounts.

17-298.01. Decennial performance audit

Beginning in 2001 and every tenth succeeding year thereafter, the auditor general shall conduct a performance audit, as defined in section 41-1278, of the programs and expenditures of the Arizona game and fish commission heritage fund pursuant to this article. The auditor general shall submit copies of the performance audit to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on natural resources and agriculture, or their successor committees.

17-299. Arizona wildlife conservation fund (Caution: 1998 Prop. 105 applies)

- A. The Arizona wildlife conservation fund is established consisting of monies deposited pursuant to section 5-601.02(H)(3)(b)(iii) and interest earned on those monies. The Arizona state game and fish commission shall administer the fund. The fund is not subject to appropriation, and expenditures from the fund are not subject to outside approval notwithstanding any provision of sections 17-241 or 17-261 or any other statutory provisions to the contrary.

**TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND**

- B. Monies received pursuant to section 5-601.02 shall be deposited directly with the Arizona wildlife conservation fund. On notice from the Arizona state game and fish commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. No monies in the Arizona wildlife conservation fund shall revert to or be deposited in any other fund, including the state general fund. Monies in the Arizona wildlife conservation fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Monies provided from the Arizona wildlife conservation fund shall supplement, not supplant, existing monies.
- C. All monies in the Arizona wildlife conservation fund shall be spent by the Arizona state game and fish commission to conserve, enhance, and restore Arizona's diverse wildlife resources and habitats for present and future generations, and which may include the acquisition of real property. The commission may grant monies to any agency of the state or any political subdivision, Indian tribe, or non-profit organization exempt from federal income taxation under section 501(c) of the internal revenue code for the purpose of conservation of wildlife or wildlife habitat or acquisition of real property or interest in real property that is wildlife habitat. A grant of money under this subsection to a nonprofit organization is conditioned on the organization providing reasonable public access to any land that is wholly or partly purchased with that money.

41-2701. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.
- 2. "Person" means any corporation, business, individual, committee, club or other organization or group of individuals.
- 3. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.

41-2702. Solicitation and award of grant applications

- A. State governmental units shall award any grant in accordance with the competitive grant solicitation requirements of this chapter.
- B. A state governmental unit shall prepare and issue a request for grant applications that includes at least the following information:
 - 1. A description of the nature of the grant project, including the scope of the work to be performed by an awardee.
 - 2. An identification of the funding source and the total amount of available funds.
 - 3. Whether a single award or multiple awards may be made.
 - 4. Encouragement of collaboration by entities for community partnerships, if appropriate.
 - 5. Any additional information required by the applications.
 - 6. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor.
 - 7. The due date for submittal of applications and the anticipated time the awards may be made.
- C. Adequate public notice of the request for grant applications shall be given at least six weeks before the due date for the submittal of applications. Adequate notification of the request for grant applications shall also be provided to the central state permitting program pursuant to section 41-1505.08.
- D. A preapplication conference may be conducted before the due date for the submittal of applications to explain the grant application requirements. If a preapplication conference is held, it shall be held at least twenty-one days before the due date. Statements made at a preapplication conference are not amendments to the request for grant applications unless a written amendment is issued.
- E. Grant applications shall be publicly received at the time and place designated in the request for grant applications. The name of each applicant shall be publicly read and recorded. All other information in the grant application is confidential during the process of evaluation. All applications shall be open for public inspection after grants are awarded. To the extent the applicant designates and the state concurs, trade secrets and other proprietary information contained in the application shall remain confidential.
- F. Applications shall be evaluated by at least three evaluators who are peers or other qualified individuals. The evaluators may allow applicants to make oral or written presentations regarding the scope of work, terms and conditions of the grant, budget and other relevant matters set forth in the request for grant applications. Applicants

**TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND**

shall be accorded fair treatment with respect to any opportunity for oral or written presentations. The evaluators may require an applicant to revise its application to reflect information provided in an oral or written presentation. Any person who has information contained in the application of competing applications shall not disclose that information.

- G. The evaluators shall review each application based solely on the evaluation criteria or factors set forth in the request for grant applications. The evaluators shall maintain a written record of the assessment of each application, which shall include comments regarding compliance with each evaluation criteria or factor, the citation of a specific criteria or factor as the basis of each stated strength or weakness and a clear differentiation between comments based on facts presented in the application and comments based on professional judgment. Evaluator assessments shall be made available for public inspection no later than thirty days after a formal award is made.
- H. The evaluators shall make award recommendations to the head of the state governmental unit based on the evaluators' reviews of each application. The evaluators' recommendations may include the adjustment of the budgets of the applicants individually or collectively.
- I. The head of the state governmental unit may affirm, modify or reject the evaluators' recommendations in whole or in part. Modification of the evaluators' recommendations may include the adjustment of the budget on any proposed award individually or on all awards by an amount or percentage. If the head of the state governmental unit does not affirm the recommendations, the head of the state governmental unit shall document in writing the specific justifications for the action taken. The specific justifications shall be made available for public inspection no later than thirty days after the action is taken.
- J. The head of a state governmental unit may enter into agreements with other state governmental units to furnish assistance in conducting the solicitation of grant applications.

41-2703. Waiver of solicitation and award procedures

- A. Notwithstanding any other provision of this chapter, the director of the department of administration or the director's designee may waive the solicitation and award procedures if a situation exists that makes compliance with section 41-2702 impracticable, unnecessary or contrary to the public interest, except that the grant solicitation and award shall be made with competition that is practicable under the circumstances.
- B. A state governmental unit seeking a waiver of solicitation and award procedures shall prepare a written request documenting and explaining the situation justifying the waiver. The request shall be submitted to the director of the department of administration or the director's designee, who shall determine in writing whether to grant the request. If the request is granted, the determination shall state the manner in which the grant is to be solicited and awarded and the limits of the determination.
- C. A copy of each request and determination shall be kept on file in the office of the state governmental unit requesting the waiver and the office of the director of the department of administration or the office of the director's designee.

41-2704. Remedies

The head of the state governmental unit may resolve protests of the award or proposed award of a grant. An appeal from a decision of the head of a state governmental unit may be made to the director of the department of administration. A protest of an award or proposed award of a grant and any appeal shall be resolved in accordance with the rules of procedure adopted by the director pursuant to section 41-2611.

41-2705. Violation; classification; liability; enforcement authority

- A. A person who violates this chapter is personally liable for the recovery of all public monies paid plus twenty per cent of the amount and legal interest from the date of payment and all costs and damages arising out of the violation.
- B. A person who intentionally or knowingly participates in the award of a grant pursuant to a scheme or artifice to avoid the requirements of this chapter is guilty of a class 4 felony.
- C. A person who serves as an evaluator of grant applications pursuant to this chapter shall sign a statement before reviewing applications that the person has no interest in any application other than that disclosed and shall not have contact with any representative of an applicant during the evaluation of applications, except those contacts specifically authorized by this chapter. The person shall disclose on the statement any contact unrelated to the review of the grant applications that the person may need to have with a representative of an applicant and any contact with a representative of an applicant during evaluation of applications except those specifically authorized by this chapter. A person who serves as an evaluator and who fails to disclose contact with a representative of an

**TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND**

applicant or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but no more than ten thousand dollars.

- D. The attorney general on behalf of this state shall enforce the provisions of this chapter.

41-2706. Applicability of chapter

- A. This chapter applies to the solicitation of grants initiated after August 6, 1999.
- B. This chapter does not apply to:
1. Any grant program that was exempt from chapter 23, article 3 of this title and for which administrative rules establishing grant solicitation procedures were adopted pursuant to chapter 6 of this title before August 6, 1999.
 2. The Arizona board of regents and schools, colleges, institutions and universities under its control if the Arizona board of regents adopts rules or policies governing the award of grants that encourage as much competition as practicable.
 3. Grants made by the cotton research and protection council for research programs related to cotton production or protection.
 4. Grants made by the Arizona iceberg lettuce research council for research programs under section 3-526.02, subsection C, paragraph 3 or 5.
 5. Grants made by the Arizona citrus research council for research programs under section 3-468.02, subsection C, paragraph 3 or 5.
 6. Grants made by the Arizona grain research and promotion council for research projects and programs under section 3-584, subsection C, paragraph 5.
 7. Grants made under section 3-268, subsection C.
 8. Grants made by the Arizona commerce authority from the Arizona competes fund pursuant to chapter 10, article 5 of this title. With respect to other grants, the authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public.
 9. Grants of less than five thousand dollars from the veterans' donations fund if the department of veterans' services adopts rules or policies governing these grants that encourage as much competition as practicable.

DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 10, Alcohol Testing



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: May 7, 2021

SUBJECT: DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 10, Alcohol Testing

Summary:

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to all rules in Title 13, Chapter 10 related to alcohol testing. Specifically, these rules prescribe methods and procedures for the administration of breath tests to determine alcohol concentration, including approval of quantitative breath-testing devices; procedures for ensuring the accuracy of results obtained from approved breath-testing devices; qualifications for persons who conduct breath tests; and, qualifications for persons who instruct others in the operation of breath-testing devices.

The Department indicates it completed the proposed course of action from its previous 5YRR, which was approved by the Council in June 2016, through a rulemaking that became effective on April 24, 2020. (Notice of Final Rulemaking, 26 A.A.R. 723, April 24, 2020).

Proposed Action

The Department does not propose to take any action regarding these rules.

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

Yes. The Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department enforces laws on Arizona's highways, including patrolling for impaired drivers. The Department has determined that the economic impact of the rule does not differ from what was determined in the most recent 2020 economic, small business, and consumer impact statement (EIS). The Department expects the economic impact to remain minimal.

The stakeholders include: the Department, other law enforcement agencies, businesses that manufacture alcohol testing devices, and the general public.

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

The Department has determined that the rules are the least costly method of achieving the regulatory objectives. The law enforcement agencies have the cost burden of initially purchasing and maintaining the breath testing devices. However, the rules impose no cost on small businesses or the public. The Department has determined that although there are costs associated with the rules, these costs are outweighed by the public benefit of fewer impaired driver collisions.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

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

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

The Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states that the rules are effective in achieving their regulatory objectives.

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

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?**

Not applicable. There are no 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?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature, unless certain exceptions are met.

Here, the Department states a general permit is not technically feasible and would not meet the applicable statutory requirements for the certification of devices and personnel. Specifically, the Department cites to the following statutes:

Pursuant to A.R.S. § 28-1324(1), the Department evaluates breath testing devices for reliability and accuracy prior to approving them for use within the law enforcement community.

Pursuant to A.R.S. § 28-1324(3) and A.R.S. § 28-1325(A), the Department must establish qualifications and issue permits for persons conducting breath testing using approved devices. Through demonstrated technical competence, all operators are permitted to operate approved devices in a manner which ensures consistent application of all statutes related to breath-alcohol testing and mitigates legal challenges through standardized testing and applicable forms.

Furthermore, A.R.S. § 28-1324(2) statutorily obligates the Department to develop a procedure which ensures the accuracy of results obtained from approved testing devices. This is accomplished, in part, by permitting quality assurance specialists (QAS). A QAS is a permitted operator who receives additional training and is responsible for instrument maintenance and for ensuring device records are properly maintained as per the breath-testing program requirements.

Finally, A.R.S. § 28-1324(4) requires the Department establish qualifications for breath-testing instructors. An instructor permit requires the highest level of training and certification to ensure instructors have the knowledge and skill to successfully train operators in all aspects of the breath-testing program.

The permits issued by the Department fall within the exception of A.R.S. § 41-1037(A)(3). Therefore, the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

The Department indicates the rules in Title 13, Chapter 10 are clear, concise, understandable, consistent, effective, and enforced as written. The Department does not propose to take any action on these rules.

Council staff recommends approval of this report.

April 2, 2021

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

**RE: Department of Public Safety 13 A.A.C. 10 *Alcohol Testing* Five-Year
Review Report**

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of the Department of Public Safety for 13 A.A.C. 10, *Alcohol Testing* which is due on May 31, 2021.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mr. Paul Swietek, Research and Planning Unit at 602-223-2049 or pswietek@azdps.gov.

Sincerely,



**Colonel Heston Silbert
Director**

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 10, Alcohol Testing
March 25, 2021

- A. List any rule you intend to expire on the date the five-year review is due under A.R.S. § 41-1056(J) and R1-6-301. An explanation of why the rule is intended to expire is required. Once a rule has expired, only a formal rulemaking process can reestablish it.

The Department does not intend for any rules to expire.

- B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department has no substantive policy statements related to breath alcohol testing.

Complete the following for each rule, table and exhibit pursuant to A.R.S. § 41-1056(A) and R1-6-301:

1. Authorization of the rules by existing statutes:

A.R.S. § 41-1713(A)(4) *Powers and Duties of Director; Authentication of Records*. General authority to make rules necessary for the operation of the Department.

A.R.S. § 28-1322(C) *Preliminary Breath Tests; Rules on Approval of Devices*. Specific authority to adopt rules prescribing the approval of quantitative preliminary breath-testing devices.

A.R.S. § 28-1324 *Breath Test Rules*. Specific authority to adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration. To include: the approval of quantitative breath-testing devices; procedures for ensuring the accuracy of results obtained from approved breath-testing devices; qualifications for persons who conduct breath tests; and, qualifications for persons who instruct others in the operation of breath-testing devices.

A.R.S. § 28-1326(A) *Blood Test; Rules; Permits*. Specific authority to adopt rules prescribing the approval of methods for the analysis of blood or other bodily substances to determine blood-alcohol concentration.

A.R.S. § 28-1323 *Admissibility of Breath Test or Other Records*. Addresses breath-test admissibility as evidence for court trial.

A.R.S. § 28-1325 *Breath Test Operator Permits*. Authorizes the issuance and revocation of breath-test operator permits.

2. The objective of the rule:

Rule	Objective
101	To clarify the rules by defining words that are used in a manner specific to the rules.
102	To specify performance criteria for blood-alcohol analysis methods; to specify existing approved blood-alcohol analysis methods; and, to describe the procedure by which an applicant for an analyst permit may submit a request for the approval of a new method of blood-alcohol analysis.
103	To specify performance criteria for breath-testing devices; to specify those breath-testing devices and methods which are currently approved by the Department; and, to describe the conditions under which an approved breath-testing device can be disapproved by the Department.
104	To specify testing procedures and the quality assurance requirements for breath testing; to specify records which must be generated as the standard operating procedure for breath testing; and, to describe the procedure for conducting duplicate breath tests.
105	To describe the types of permits and certificates issued by the Department; to specify the terms and conditions of those permits and certificates; and, to specify the action a permit or certificate holder is authorized to conduct.
106	To specify the qualifications an individual must meet to be issued an analyst or breath-testing permit or certificate by the Department; and, to describe the procedure by which the very first breath test permit and certificate are issued for a newly approved breath-test device.
107	To specify the application process for an initial permit, and the renewal of an existing permit, for Analyst, Operator, Quality Assurance Specialist and Instructor.
108	To specify the requirements of the analyst proficiency testing program administered by the Department and the criteria for the quality assurance programs which must be maintained by the analysts.
109	To specify the conditions under which an analyst or breath test permit may be revoked or suspended.
Exhibits A through D	To provide standardized applications for the different types of permits and certificates issued by the Department.
Exhibits G-1 through I-2	To provide standardized operational, calibration check and quality assurance procedure record forms for the different types of evidential breath-test devices approved by the Department.

3. Are the rules effective in achieving their objectives? Yes.

The Department determined each rule is effective in meeting its individual objective and reviewed the objective of the rules in 2020 when conducting a final rulemaking; refer to Item 10 below.

4. Are the rules consistent with other rules and statutes? Yes.

The Department determined all rules are consistent with other rules and with legislative intent.

5. Are the rules enforced as written? Yes.

The Department enforces all rules as written.

6. Are the rules clear, concise and understandable? Yes.

The Department determined that each rule is concisely written and understandable, and referenced requirements and exhibits are easy to locate and understand. The Department received no criticism on the conciseness and understandability of the rules. Any area that may not have been clear, concise and understandable was addressed during a final rulemaking in 2020; refer to Item 10 below.

7. Has the agency received written criticisms of the rules within the last five years? No.

The Department did not receive any written criticism of the rules within the last five years.

8. Economic, small business and consumer impact comparison:

The Department's 2006 and 2020 *Economic Impact Statements* remain relevant.

The Department still expects minimal economic impact to law enforcement agencies. Alcohol testing devices are scientific instruments; agencies are aware of the purchase costs and required maintenance for the devices to be qualified under scientific standards and withstand scrutiny in court proceedings. Agencies incur the cost of initial purchase of the device and minor costs that may be associated with travelling to locations for training.

These rules impose no economic burden to small businesses or the public. Businesses that manufacture alcohol testing devices and parts benefit from the sale of those devices and parts. The public will benefit through reduced negative personal and economic impact caused when an impaired driver causes a collision.

9. Has the agency received any business competitiveness analysis of the rules? No.

The Department has not received any such analysis.

10. Has the agency completed the course of action indicated in the agency’s previous five-year review report? Yes.

Rule	Action Needed	Action Taken
101	Amend Items 16 and 20 to allow calibration and assurance checks to occur concurrently due to the type of equipment in use.	Notice of Final Rulemaking 26 A.A.R. 723 April 24, 2020.
103	Amend to allow for the Intoxilyzer Model 9000. Update the federal product list incorporated by reference document. The Department opted to keep the Model 5000 as a continued option for agencies and court purposes. Suggested clarifications and updates were made during the rule changes submitted and approved in April of 2020.	Notice of Final Rulemaking 26 A.A.R. 723 April 24, 2020.
104	Remove expired code references and incorporate the new Exhibit I references.	Notice of Final Rulemaking 26 A.A.R. 723 April 24, 2020.
107	Remove the permit renewal time frames.	Notice of Final Rulemaking 26 A.A.R. 723 April 24, 2020.
Exhibits A to D	Change the order the person enters their name to reduce confusion. Remove the option to provide a name other than your primary name on a legal permit.	Notice of Final Rulemaking 26 A.A.R. 723 April 24, 2020.
Exhibits E-1 to F-5	Expiration intended during the 2016 five-year review.	Expired in 2016 pursuant to A.R.S. § 41-1056(J).
Exhibit I-1 to I-2	Provide an operational check list and maintenance/calibration check list for the Intoxilyzer Model 9000.	Notice of Final Rulemaking 26 A.A.R. 723 April 24, 2020.

11. A determination 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 rules including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

In addition to the information provided in Item 8 above, the Department believes the benefits do outweigh the costs.

Aside from the initial expense of purchasing the breath testing device, there are no costs to the agencies who participate in the breath testing program. The Department absorbs all costs related to the repair and maintenance of the testing devices, printing of operator, quality assurance specialist and instructor permits, and the annual fee for the online recertification software.

The alcohol testing program is a key component to removing impaired drivers from Arizona's roadways in keeping with the Governor's initiatives of protecting our communities and lands to safely roam, work and play.

The following information was obtained from the Governor's Office of Highway Safety, *State of Arizona Highway Safety Plan FY2021*, published 2019 state crash data:

- 256 alcohol-impaired, driving-related fatalities statewide.
- Over 29,000 impaired driver arrests statewide.

12. Are the rules more stringent than corresponding federal laws? No.

There are no applicable federal laws.

13. For rules adopted or amended 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:

Pursuant to A.R.S. § 41-1037(A)(3), a general permit is not technically feasible and would not meet the applicable statutory requirements for the certification of devices and personnel.

Pursuant to A.R.S. § 28-1324(1), the Department evaluates breath testing devices for reliability and accuracy prior to approving them for use within the law enforcement community.

Pursuant to A.R.S. § 28-1324(3) and A.R.S. § 28-1325(A), the Department must establish qualifications and issue permits for persons conducting breath testing using approved devices. Through demonstrated technical competence, all operators are permitted to operate approved devices in a manner which ensures consistent application of all statutes related to breath-alcohol testing and mitigates legal challenges through standardized testing and applicable forms.

Furthermore, A.R.S. § 28-1324(2) statutorily obligates the Department to develop a procedure which ensures the accuracy of results obtained from approved testing devices. This is accomplished, in part, by permitting quality assurance specialists (QAS). A QAS is a permitted operator who receives additional training and is responsible for instrument maintenance and for ensuring device records are properly maintained as per the breath-testing program requirements.

Finally, A.R.S. § 28-1324(4) requires the Department establish qualifications for breath-testing instructors. An instructor permit requires the highest level of training and certification to ensure instructors have the knowledge and skill to successfully train operators in all aspects of the breath-testing program.

14. Proposed course of action:

The Department is recommending no changes therefore there is no course of action.



TITLE 13. PUBLIC SAFETY

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2020 through June 30, 2020 (Supp. 20-2).

R13-10-101.	Definitions	2	Exhibit D.	Application for Breath Testing Instructor	10
R13-10-103.	Breath-testing Devices	3	Exhibit I-1.	Operational Checklist Standard Operational Procedure, Arizona Department of Public Safety, Intoxilyzer Model 9000, Duplicate Breath Test 22	
R13-10-104.	Testing Procedures	3		Arizona Department of Public Safety, Intoxilyzer Model 9000, Periodic Maintenance, Standard Calibration Check and Standard Quality Assurance Procedure.....	23
R13-10-107.	Application Processes	5			
Exhibit A.	Application for Blood Alcohol Analyst Permit	7	Exhibit I-2.		
Exhibit B.	Application for Breath Alcohol Operator Permit .	8			
Exhibit C.	Application for Breath Alcohol Quality Assurance Specialist Permit	9			

Questions about these rules? Contact:

Name: Jennifer Kochanski, Crime Laboratory Manager
Address: Arizona Department of Public Safety
Scientific Analysis Bureau
PO Box 6638, MD1150
Phoenix, AZ 85005-6638
Telephone: (602) 223-2795
E-mail: jenniferkochanski@azdps.gov

The release of this Chapter in Supp. 20-2 replaces Supp. 16-3, 1-21 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 13. PUBLIC SAFETY

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

(Authority: A.R.S. §§ 28-1322 through 28-1326 and 41-1713)

Editor's Note: This Chapter, consisting of Article 1, Sections R13-10-101 through R13-10-109, Exhibits A through D, Exhibits E-1, through E-6, F-1 through F-5, G-1 through G-6, and H-1, through H-4, made by final rulemaking at 12 A.A.R. 1916, effective May 18, 2006 (Supp. 06-2).

ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION

Article 1, consisting of Sections R13-10-101 through R13-10-109, Exhibits A through D, and Exhibits E-1 through E-6, F-1 through F-5, G-1 through G-6, and H-1 through H-4, made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Section	
R13-10-101.	Definitions 2
R13-10-102.	Analyst Methods; Approval of Additional Methods 3
R13-10-103.	Breath-testing Devices 3
R13-10-104.	Testing Procedures 3
R13-10-105.	Permits and Certificates 4
R13-10-106.	Qualifications 4
R13-10-107.	Application Processes 5
R13-10-108.	Examination and Quality Assurance Requirements for Analysts 5
R13-10-109.	Revocation or Suspension of Permits; Appeals ... 6
Exhibit A.	Application for Blood Alcohol Analyst Permit ... 7
Exhibit B.	Application for Breath Alcohol Operator Permit 8
Exhibit C.	Application for Breath Alcohol Quality Assurance Specialist Permit 9
Exhibit D.	Application for Breath Testing Instructor 10
Exhibit E-1.	Expired 11
Exhibit E-2.	Expired 11
Exhibit E-3.	Expired 11
Exhibit E-4.	Expired 11
Exhibit E-5.	Expired 11
Exhibit E-6.	Expired 11
Exhibit F-1.	Expired 11

Exhibit F-2.	Expired 11
Exhibit F-3.	Expired 11
Exhibit F-4.	Expired 11
Exhibit F-5.	Expired 11
Exhibit G-1.	Standard Operational Procedure, Intoxilyzer Model 8000 12
Exhibit G-2.	Standard Calibration Check Procedure, Intoxilyzer Model 8000 13
Exhibit G-3.	Standard Calibration Check Procedure Intoxilyzer, Model 8000 (Option P) 14
Exhibit G-4.	Standard Quality Assurance Procedure Intoxilyzer, Model 8000 15
Exhibit G-5.	Standard Quality Assurance Procedure Intoxilyze, Model 8000 (Option P) 16
Exhibit G-6.	Standard Operational and Quality Assurance Procedure, Intoxilyzer Model 8000 17
Exhibit H-1.	Standard Operational Procedure Alco Sensor RBT AZ 18
Exhibit H-2.	Standard Calibration Check Procedure Alco Sensor RBT AZ 19
Exhibit H-3.	Standard Quality Assurance Procedure Alco Sensor RBT AZ 20
Exhibit H-4.	Standard Calibration Procedure Alco Sensor RBT AZ 21
Exhibit I-1.	Operational Checklist Standard Operational Procedure, Arizona Department of Public Safety, Intoxilyzer Model 9000, Duplicate Breath Test 22
Exhibit I-2.	Arizona Department of Public Safety, Intoxilyzer Model 9000, Periodic Maintenance, Standard Calibration Check and Standard Quality Assurance Procedure 23

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION**R13-10-101. Definitions**

In this Article, unless the context otherwise requires:

1. "Alcohol concentration" or "AC" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
2. "Analyst" means an individual who has been issued an analyst permit by the Department to use approved methods to make alcohol concentration determinations from blood or other bodily substances.
3. "Analyst permit" means a document issued by the Department indicating the permit holder has been found qualified to utilize an approved method in the determination of alcohol concentrations.
4. "Analytical procedure" means a series of operations utilized by an analyst when employing an approved method in the determination of alcohol concentration.
5. "Calibration Check" means an operation utilizing a standard alcohol concentration solution to determine whether a device is accurately measuring alcohol concentrations that is performed as a Standard Calibration Check Procedure by a Quality Assurance Specialist at least every 31 days or performed as Concurrent Calibration Check Procedures by an Operator within a successfully completed test sequence bracketing a duplicate breath test.
6. "Concurrent Calibration Check Procedure" means an operation performed by an Operator, utilizing a standard alcohol concentration solution, within a successfully completed test sequence to determine whether a device is accurately measuring alcohol concentration during a duplicate breath test.
7. "Concurrent Quality Assurance Procedure" means operations performed by an Operator, including a Concurrent Calibration Check Procedure and diagnostic checks, within a successfully completed test sequence to determine whether a device is accurately and properly measuring alcohol concentration during a duplicate breath test.
8. "Deprivation period" means at least a 15-minute period immediately prior to a duplicate breath test during which period the subject has not ingested any alcoholic beverages or other fluids, eaten, vomited, smoked or placed any foreign object in the mouth.
9. "Determination" means an analysis of a specimen of blood, breath, or other bodily substance and expressing the results of the analysis in terms of alcohol concentration.
10. "Device" means a breath testing instrument.
11. "Duplicate breath test" means two consecutive breath tests that immediately follow a deprivation period, agree within 0.020 AC of each other, and are conducted at least five and no more than 10 minutes apart.
12. "Instructor" means a person approved by the Department to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved device.
13. "Method" means an analytical technique utilized by an analyst or a device to make an alcohol concentration determination (e.g. gas chromatography, infrared spectrophotometry, or specific fuel cell detection.)
14. "Operator" means a person who has been issued an Operator permit from the Department to operate a specific approved device for the purpose of determining an alcohol concentration from a specimen of breath and to perform the Concurrent Quality Assurance Procedures, Concurrent Calibration Check Procedures, and diagnostic checks to determine whether a device is operating accurately and properly.
15. "Operator Permit" means a document issued by the Department indicating that the permit holder has been found qualified to operate and perform the associated Quality Assurance Procedures on a specific approved device.
16. "Periodic Maintenance" means a Quality Assurance Procedure consisting of either of the following, which determines whether a device is operating accurately and properly:
 - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure (these checks and procedures may be performed concurrently), or
 - b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
17. "Preliminary breath test" means a pre-arrest breath test.
18. "Preliminary breath tester" or "PBT" means any approved device used prior to an arrest for the purpose of obtaining a determination of alcohol concentration from a specimen of breath and includes any device included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices as incorporated by reference in R13-10-103(F).
19. "Procedure" means a series of operations used by an Operator or a Quality Assurance Specialist when employing an approved device in the determination of alcohol concentration or performing associated quality assurance testing.
20. "Quality Assurance Procedure" means Periodic Maintenance consisting of either of the following, which determines whether a device is operating accurately and properly:
 - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure (these checks and procedures may be performed concurrently), or
 - b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
21. "Quality Assurance Specialist" means a person who has been issued a Quality Assurance Specialist permit from the Department to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure to determine the accurate and proper operation of a specific approved device.
22. "Quality Assurance Specialist permit" means a document issued by the Department indicating that the permit holder has been found qualified to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure on a specific approved device.
23. "Standard Calibration Check Procedure" means operations performed by a Quality Assurance Specialist, at least every 31 days, to determine whether a device is accurately measuring alcohol concentration.
24. "Standard Operational Procedure" means operations performed by an Operator for the purpose of determining an alcohol concentration from a specimen of breath.
25. "Standard Quality Assurance Procedure" means operations performed by a Quality Assurance Specialist, at least every 90 days.

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Section amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

R13-10-102. Analyst Methods; Approval of Additional Methods

- A. An analyst shall use one of the following methods to analyze blood or other bodily substances to determine a person’s alcohol concentration:
 1. Gas chromatography, or
 2. Another method that has been approved by the Director under the procedure in subsections (B) and (C).
- B. An applicant for an analyst permit may submit, with the permit application, a request that the Director approve a method other than a method approved under subsection (A)(1) or (2).
- C. For a method to be approved by the Director, the method’s accuracy and reproducibility shall comply with the following standards:
 1. The test results of samples with a standard alcohol concentration shall agree with the established value within the limits of ± 0.01 grams per 100 milliliters of blood or ±10 percent, whichever is greater.
 2. The accuracy and precision shall be determined on the basis of ten measurements at four alcohol concentrations between 0.020 and 0.350 grams per 100 milliliters of blood, to include at least one value < 0.100 and one value > 0.250.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-103. Breath-testing Devices

- A. The Director may approve devices used to determine alcohol concentration from breath after the Department successfully tests a typical model of the device for compliance with the standards in subsection (B).
- B. A device shall meet the following standards of performance:
 1. Breath specimens tested shall be alveolar in composition.
 2. The device shall be capable of analysis of a solution of known alcohol concentration with an accuracy limit of a systematic error of no more than ± 0.005 grams per 210 liters of breath or ± 5 percent, whichever is greater, and a precision limit of an average standard deviation of no more than 0.0042 grams per 210 liters of breath. The accuracy and precision of the device being evaluated shall be determined on the basis of 10 consecutive measurements at 4 alcohol vapor concentrations that are between 0.020 and 0.350 grams per 210 liters of breath, to include at least one value < 0.100 and one value > 0.250.
 3. The device shall be capable of testing a breath sample that results in alcohol concentrations of less than 0.01 grams per 210 liters of breath when alcohol-free subjects are tested.
- C. The Department, upon specific findings that a device, method, or breath test procedure is inaccurate, unreliable, or is an unacceptable test for determining alcohol concentration or that its use has been discontinued in the state, shall disapprove in writing further use of the device, method, or procedure.
- D. The methods approved by the Director for use by a device to determine alcohol concentration are infrared spectrophotometry and specific fuel cell detection.
- E. The following devices are approved by the Director:

Device/Model	Manufacturer
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Intoxilyzer Model 5000 with or without Vapor Recirculation and with or without Keyboard	CMI, Inc.
Intoxilyzer Model 5000EN	CMI, Inc.
Intoxilyzer Model 8000	CMI, Inc.
Intoxilyzer Model 9000	CMI, Inc.
RBT AZ (Alco Sensor AZ/RBT AZ)	Intoximeter, Inc.

- F. Products included on the National Highway Traffic Safety Administration’s Conforming Products List of Evidential Breath Measurement Devices set forth in 82 FR 50940-50944 (November 2, 2017) are approved by the Director as preliminary breath testers to determine alcohol concentration. This document is incorporated by reference and does not include any later amendments or editions. A copy of this document is available from the Department and may be obtained from the National Highway Traffic Safety Administration’s web site (www.nhtsa.gov) or by contacting the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401.
- G. Devices listed in subsection (E) may be used to administer preliminary breath tests.
- H. Except when a device is used as a PBT or for other non-evidential testing purposes, an Operator permit and Standard Operational Procedure are required for the operation of devices listed in subsection (E).
- I. In addition to the devices approved in subsection (E), the Director may approve, in writing, a device and related Standard Operational and Quality Assurance Procedures after the device has been successfully tested for compliance with the standards in subsection (B) for use prior to and pending the device being added to subsection (E). The approval shall expire three years after its effective date unless subsection (E) is amended to include the approved device.
- J. In addition to devices approved as preliminary breath testers in subsection (F), the Director may approve in writing as a PBT a new device placed on subsequent National Highway Traffic Safety Administration’s Conforming Products Lists of Evidential Breath Measurement Devices for use pending the new Conforming Products List being added to subsection (F).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Section amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

R13-10-104. Testing Procedures

- A. Law enforcement agencies or individuals acting independently of law enforcement agencies who conduct alcohol concentration determinations by means of devices shall utilize a quality assurance program that is conducted by Quality Assurance Specialists or Operators and generate records of periodic maintenance. This quality assurance program shall include:
 1. Criteria for ensuring the accurate and proper operation of devices by the regular performance of Calibration Checks and Quality Assurance Procedures as referenced in subsections (A)(2) and (A)(3);
 2. Calibration Checks of devices that are performed within 31 days of each other as Standard Calibration Check Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Calibration Check Procedures and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

G-2, G-3, G-6, H-2 and I-2 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of determining the value of a standard alcohol concentration solution with an accuracy limit of ± 0.01 grams per 210 liters of breath or ± 10 percent, whichever is greater;

3. Quality Assurance Procedure checks of devices that are performed within 90 days of each other as Standard Quality Assurance Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Quality Assurance Procedures, and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits G-4, G-5, G-6, H-3, H-4 and I-2 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of proper operation and is functioning as required by the Quality Assurance Procedures for the device;
 4. Standard alcohol concentration solutions, either liquid or gas, that are National Institute of Standards and Technology (NIST) traceable; and
 5. Records of Calibration Checks, Quality Assurance Procedures and maintenance or repairs for each device in use.
- B.** An Operator shall utilize the Standard Operational Procedure approved by the Department for the device being operated in performing tests for the determination of alcohol concentration, as contained in Exhibits G-1, G-6, H-1 and I-1 or as approved by the Director according to R13-10-103(I).
- C.** Duplicate breath tests shall be administered at intervals of not less than five minutes nor more than 10 minutes. The results of both tests shall be within 0.020 alcohol concentration of each other. If the second test is not within 0.020 alcohol concentration of the first test, additional tests shall be administered until the results of two consecutive tests are within 0.020 alcohol concentration.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Section amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

R13-10-105. Permits and Certificates

- A.** The Department shall issue Analyst permits to qualified applicants, in accordance with R13-10-106(A), who have satisfactorily demonstrated through proficiency testing as specified in R13-10-108(A) their proficiency in conducting an alcohol concentration determination by one or more of the methods listed in R13-10-102. The Analyst permit shall:
1. State the method of alcohol concentration determination the permit holder is approved to utilize and the type of specimen the permit holder is approved to analyze (blood or other bodily substances); and
 2. Be valid for one year.
- B.** An Analyst shall employ, in testing for alcohol concentration in matters arising under A.R.S. Title 28, Chapter 4, Article 3, the same analytical procedures as those employed by the analyst for proficiency testing.
- C.** The Department shall issue two categories of device permits.
1. Operator permits shall be issued to applicants who qualify under R13-10-106(B) or (E). This permit authorizes operation and performance of associated Quality Assurance Procedures, including Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures, performed within a successfully completed test sequence bracketing a duplicate breath test on the device specified on the permit. Operator permits issued after the initial effective date of this Section shall be valid for five

years from the date of issue. Permits issued to Operators before the initial effective date of this Section shall remain in effect and be valid for five years after the initial effective date of this Section.

2. Quality Assurance Specialist permits shall be issued to applicants who hold a valid Operator permit and who qualify as a Quality Assurance Specialist under R13-10-106(C) or (E). This Quality Assurance Specialist permit authorizes the holder to perform Quality Assurance Procedures, including Standard Calibration Check Procedures and Standard Quality Assurance Procedures, on the device specified on the permit. Quality Assurance Specialist permits issued after the initial effective date of this Section shall be valid for five years from the date of issue. Permits issued to Quality Assurance Specialists before the initial effective date of this Section shall remain in effect and be valid for five years after the initial effective date of this Section.
 3. Operator and Quality Assurance Specialist permits may be renewed by application as required by R13-10-107 and successful completion of a recertification course approved by the Department.
 4. The Department shall issue duplicate (replacement) permits upon request and upon verification of the qualifications set forth in R13-10-106.
- D.** Law enforcement agencies shall supply the Department, upon request, with a list of current Operator and Quality Assurance Specialist permit holders and shall update the list as required by the Department, but no more frequently than annually.
- E.** The Department shall issue Instructor certificates to qualified applicants who hold valid Operator and Quality Assurance Specialist permits and who qualify as an Instructor under R13-10-106(D) or (E). The Instructor certificate authorizes the holder to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved device. Instructor certificates issued after the initial effective date of this Section shall be valid for five years from the date of issue. Instructor certificates issued before the initial effective date of this Section shall remain in effect and be valid for five years from the initial effective date of this Section. Instructor certificates may be renewed by application as required by R13-10-107 and successful completion of a recertification examination approved by the Department.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-106. Qualifications

- A.** To qualify for an Analyst permit, a person shall hold a degree from a college or university accredited by a regional accrediting body recognized by the United States Department of Education and have earned 15 or more semester credits, or the equivalent, of chemistry, including three or more credits of organic chemistry.
- B.** To qualify for an Operator permit, a person shall:
1. Be employed by a law enforcement agency or laboratory that has access to a device for the person's use as set forth in R13-10-103; and
 2. Complete a course in the determination of alcohol concentration approved by the Department with a score of 80 percent or better. The Department shall approve courses taught by an Instructor if they contain the following:
 - a. Instruction on the effects of alcohol on the human body;
 - b. Instruction on and demonstration of the operational principles of the selected device, which shall include

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

a functional description and detailed operational description of the method;

- c. Instruction on the legal aspects of breath tests in general and on the particular method to be employed;
 - d. Concurrent Calibration Check Procedures (when applicable to the device) approved by the Department;
 - e. Concurrent Quality Assurance Procedures (when applicable to the device) approved by the Department;
 - f. Applicant participation with the appropriate device utilizing reference standards, testing of subjects, or other methods that will indicate the actual response of the device; and
 - g. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in operating the device.
- C. To qualify for a Quality Assurance Specialist permit, a person shall possess a valid Operator permit to operate the approved device and complete a course of training approved by the Department with a score of 80 percent or better. The Department shall approve courses taught by an Instructor if they contain the following:
- 1. Review of the theory of breath testing and the operation of the particular testing device;
 - 2. Standard Calibration Check Procedures approved by the Department;
 - 3. Standard Quality Assurance Procedures approved by the Department;
 - 4. Applicant participation with the appropriate device utilizing reference standards, testing of subjects, or other methods that will indicate the actual response of the device; and
 - 5. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in operating the device.
- D. To qualify as an Instructor, a person shall hold valid Operator and Quality Assurance Specialist permits on the device for which instruction is given. In addition, except as provided in subsection (E), all applicants shall complete a comprehensive instructor examination approved and administered by the Department with a score of 90 percent or better. The Department shall approve instructor examinations that include the following:
- 1. The theory of breath testing and the operation of the specific device, and
 - 2. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.
- E. If a device is newly approved and no Operator and Quality Assurance Specialist permits have been issued for the device, a person may qualify to be an Operator, Quality Assurance Specialist, and Instructor for the specific device by completing a Department-administered, manufacturer-endorsed, instructor training course and a comprehensive examination with a score of 90 percent or better. The Instructor training course shall include the following:
- 1. Review of the theory of breath testing,
 - 2. Instruction on the operation of the device, and
 - 3. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-107. Application Processes

- A. An applicant for an initial Analyst permit or the renewal of an existing Analyst permit shall complete the form shown as Exhibit A and submit it to the Department.
- B. An applicant for an initial Operator permit or the renewal of an existing Operator permit shall complete the form shown as Exhibit B and submitted to the Department.
- C. An applicant for an initial Quality Assurance Specialist permit or the renewal of an existing Quality Assurance Specialist permit shall complete the form shown as Exhibit C and submitted to the Department.
- D. An applicant for an initial Instructor approval or the renewal of an existing Instructor approval shall complete the form shown as Exhibit D and submitted to the Department.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Section amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

R13-10-108. Examination and Quality Assurance Requirements for Analysts

- A. The Department shall require an Analyst permit applicant to successfully demonstrate the applicant's proficiency in making alcohol concentration determinations from test specimens in accordance with subsection (B). The applicant shall be examined only on the methods that relate to the type of determination for which the applicant desires a permit.
- B. An applicant shall, before receiving an initial Analyst permit or renewal of an existing Analyst permit, participate in and successfully complete proficiency testing administered by the Department. An applicant shall successfully analyze samples by testing at least three suitable reference standards or control samples with a known alcohol concentration in the range of 0.00 to 0.40 grams per 100 milliliters of blood and having the results agree with the established value within the limits of ± 0.01 grams per 100 milliliters of blood or ± 10 percent, whichever is greater. Proficiency testing shall be administered by the Department as follows:
 - 1. An applicant shall correctly analyze all proficiency samples in the set provided by the Department.
 - 2. When returning the results of analyses to the Department, the applicant shall attach an affidavit attesting that the applicant analyzed the proficiency samples without help or input from any other person.
 - 3. An applicant failing to correctly analyze all proficiency samples in the set will be provided an opportunity to successfully analyze a second set of samples.
 - 4. The Department shall deny the application of an applicant who declines or fails to correctly analyze the second set of proficiency samples and shall not issue a permit.
 - 5. An applicant who fails to successfully analyze the second set of proficiency samples and whose application is denied may reapply for an analyst's permit beginning 90 days from the date of denial.
- C. An analyst who conducts alcohol concentration determinations shall implement and maintain a quality assurance program. This program shall be designed to ensure the validity of test results by providing for:
 - 1. Chain of custody,
 - 2. Quality control,
 - 3. Analytical procedures,
 - 4. Documentation of test results, and

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

5. Participation in proficiency testing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-109. Revocation or Suspension of Permits; Appeals

- A. The Department may suspend or revoke a permit for any of the following reasons:
 1. A false statement on the permit holder's application,
 2. The neglect or refusal to examine and report the results of sample specimens given the Analyst permit holder for proficiency testing purposes,
 3. The failure of an Analyst to maintain quality control over equipment or reagents necessary for accuracy in reporting,
 4. Failure to obtain results on proficiency test samples as indicated in R13-10-108(B),
 5. Failure to operate a device according to approved procedures or the failure to analyze blood or other bodily substances according to approved methods, or

6. The failure by a permit holder to maintain documentation required by this Article or to make it available to Departmental representatives for inspection for purposes of administering this Article.

- B. When a permit has been suspended or revoked in one or more of the approved methods or devices and there remain one or more methods or devices for which the permittee is approved that are not affected by the revocation or suspension, the permit holder shall return the suspended or revoked permit to the Department. The Department shall issue a replacement permit that shows only those approved methods or devices unaffected by the event leading to the suspension or revocation.
- C. The provisions of A.R.S. Title 41, Chapter 6, Article 10 are applicable to denials, revocations, suspensions and administrative appeals.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

Exhibit A. Application for Blood Alcohol Analyst Permit

APPLICATION FOR BLOOD ALCOHOL ANALYST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W. Encanto Blvd.
Phoenix, Arizona 85009
(602) 223-2394

Application for Analyst permit to perform analysis of blood or other bodily substances for alcohol concentration determinations.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT RENEWAL PERMIT NUMBER

1. Name: (Full legal name) (First) (Middle) (Last) (Maiden)

2. Date of Birth: (Month) (Day) (Year)

3. Employer: (Name) (Address) (Phone) (Fax)

4. Email address:

5. Education: I have earned a degree from an accredited college or university with 15 or more semester credits or the equivalent of college chemistry, including at least 3 credits in organic chemistry. Yes No
College(s) attended (City & State) (Year Graduated) (Degree)

6. Check the analytical method(s) for which you require an Analyst permit: Gas Chromatography Other:

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant) (Date)

DPS Form Exh A (Rev. 19-1)

Historical Note

New Exhibit A made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2). Exhibit A amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

Exhibit B. Application for Breath Alcohol Operator Permit

APPLICATION FOR BREATH ALCOHOL OPERATOR PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W. Encanto Blvd.
Phoenix, Arizona 85009
(602) 223-2394

Application for an Operator permit to perform alcohol concentration determinations and associated quality assurance procedures on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT ___ RENEWAL ___

DO YOU HAVE AN OPERATOR PERMIT(S)? YES ___ NO ___

OPERATOR DEVICE(S) / PERMIT NUMBER(S) _____

1. Name: _____
(Full legal name) (First) (Middle) (Last) (Maiden)

2. Employer: _____
(Name)

(Address)

(Phone) (Fax)

3. Email address: _____

4. Operator permit requested for what device(s): _____

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant) Badge # (Date)

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training: _____

2. Date and Location of Training: _____
(Date) (Location)

3. Arizona Department of Public Safety course approval number: _____

4. Did applicant successfully complete the course? Pass ___ Fail ___

(Signature of Instructor) (Print Name) (Date)

DPS Form Exh B (Rev. 19-1)

Historical Note

New Exhibit B made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2). Exhibit B amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

Exhibit C. Application for Breath Alcohol Quality Assurance Specialist Permit

APPLICATION FOR BREATH ALCOHOL QUALITY ASSURANCE SPECIALIST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W. Encanto Blvd.
Phoenix, Arizona 85009
(602) 223-2394

Application for a QAS permit to perform quality assurance procedures on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT ___ RENEWAL ___

DO YOU HAVE AN OPERATOR PERMIT(S)? YES ___ NO ___

OPERATOR DEVICE(S) / PERMIT NUMBER(S) _____

1. Name: _____
(Full legal name) (First) (Middle) (Last) (Maiden)

2. Employer: _____
(Name)

(Address)

(Phone) (Fax)

3. Email address: _____

4. QAS permit requested for what device(s): _____

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant)

Badge #

(Date)

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training: _____

2. Date and Location of Training: _____
(Date) (Location)

3. Arizona Department of Public Safety course approval number: _____

4. Did applicant successfully complete the course? Pass ___ Fail ___

(Signature of Instructor)

(Print Name)

(Date)

DPS Form Exh C (Rev. 19-1)

Historical Note

New Exhibit C made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2). Exhibit C amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

Exhibit D. Application for Breath Testing Instructor

APPLICATION FOR BREATH TESTING INSTRUCTOR

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W. Encanto Blvd.
Phoenix, Arizona 85009
(602) 223-2394

Application for an Instructor certificate to provide Operator and QAS training on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL APPROVAL ___ RENEWAL ___

DO YOU HAVE AN OPERATOR PERMIT(S)? YES ___ NO ___

OPERATOR DEVICE(S) / PERMIT NUMBER(S)? _____

DO YOU HAVE QAS PERMIT(S)? YES ___ NO ___

QAS DEVICE(S) / PERMIT NUMBER(S) _____

1. Name: _____
(Full legal name) (First) (Middle) (Last) (Maiden)

2. Employer: _____
(Name)

(Address)

(Phone) (Fax)

3. Email address: _____

4. Instructor certificate requested for what device: _____

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant) (Date)

TO BE COMPLETED BY REGULATOR

1. Arizona Department of Public Safety examination approval number: _____

2. Did applicant successfully attain Instructor approval? Pass ___ Fail ___

(Signature of Regulator) (Print Name) (Date)

DPS Form Exh D (Rev. 19-1)

Historical Note

New Exhibit D made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2). Exhibit D amended by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

Exhibit E-1. Expired**Historical Note**

New Exhibit E-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit E-1 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit E-2. Expired**Historical Note**

New Exhibit E-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit E-2 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit E-3. Expired**Historical Note**

New Exhibit E-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit E-3 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit E-4. Expired**Historical Note**

New Exhibit E-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit E-4 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit E-5. Expired**Historical Note**

New Exhibit E-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit E-5 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit E-6. Expired**Historical Note**

New Exhibit E-6 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit E-6 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit F-1. Expired**Historical Note**

New Exhibit F-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit F-1 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit F-2. Expired**Historical Note**

New Exhibit F-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit F-2 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit F-3. Expired**Historical Note**

New Exhibit F-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit F-3 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit F-4. Expired**Historical Note**

New Exhibit F-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit F-4 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit F-5. Expired**Historical Note**

New Exhibit F-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).
Exhibit F-5 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING

Exhibit G-1. Standard Operational Procedure, Intoxilyzer Model 8000

OPERATIONAL CHECKLIST
ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD OPERATIONAL PROCEDURE
INTOXILYZER MODEL 8000
DUPLICATE BREATH TEST

SUBJECT NAME _____ DATE _____

AGENCY _____ OPERATOR _____

INSTRUMENT SERIAL # _____ LOCATION _____

TEST RESULTS 0. _____ AC TIME _____
0. _____ AC TIME _____
0. _____ AC TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

- () 1. Display reads "PUSH BUTTON TO START".
() 2. Push Start Test button.
() 3. Follow automated instructions on instrument display.
() 4. If test record reads "Successfully Completed Test Sequence" go to step 5
OR
If test record reads "Not a Successfully Completed Test Sequence", and subject will be tested again, remove test record and go to step 1
OR
If test record reads "Not a Successfully Completed Test Sequence", and subject will not be tested again, go to step 5
() 5. Remove test record.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh G-1 (Rev 05-1)

Historical Note

New Exhibit G-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-2. Standard Calibration Check Procedure, Intoxilyzer Model 8000

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)
ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000
STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

- () 1. Ensure that gas tank is attached to instrument and contains a standard alcohol concentration solution _____ AC.
OR
Pour a standard alcohol concentration solution _____ AC, into a clean dry simulator and assemble the simulator. Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach 34° C ± 0.2° C
- () 2. Intoxilyzer 8000 display reads "PUSH BUTTON TO START"
- () 3. Go to the "Control Testing Menu". Select "D" for dry control test or "W" for wet control test. After selection is made press ENTER.
- () 4. Air blank completed.
- () 5. Calibration check completed. Test results 0. _____ AC.
- () 6. Air blank completed.
- () 7. Remove printed record. Attach the record to the completed checklist.

SIGNATURE _____

DPS Form Exh G-2 (Rev 05-01)

Historical Note

New Exhibit G-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-3. Standard Calibration Check Procedure Intoxilyzer, Model 8000 (Option P)

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)
ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000
STANDARD CALIBRATION CHECK PROCEDURE
(OPTION P)

1. a. Ensure dry gas tank is attached to instrument and contains a standard alcohol concentration solution alcohol standard.
OR
- b. Pour a standard alcohol concentration solution into a clean dry simulator and assemble the simulator.
Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach $34^{\circ}\text{C} \pm 0.2^{\circ}\text{C}$
2. Intoxilyzer 8000 display reads "PUSH BUTTON TO START"
3. Go to the "Control Testing Menu". Select "D" for dry control test or "W" for wet control test. After selection is made press ENTER.
4. Air blank completed.
5. Standard Calibration Check completed.
6. Air blank completed.

DPS Form Exh G-3 (Rev 05-01)

Historical Note

New Exhibit G-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-4. Standard Quality Assurance Procedure Intoxilyzer, Model 8000

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000
STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

() 1. Display Reads "PUSH BUTTON TO START"

DIAGNOSTIC TESTS

- () 1. Clock time check.
() 2. Date check.

OPERATIONAL TESTS

- () 1. Alcohol-free subject test result 0. _____ AC.
() 2. Error recognition logic system functioning.
Not a Successfully Completed Test Sequence printed
() 3. Proper sample recognition system.
Not a Successfully Completed Test Sequence printed
Deficient sample printed.
() 4. Standard Calibration Check standard 0. _____ AC. Result 0. _____ AC.

Instrument is operating properly and accurately. YES _____ NO _____

COMMENTS _____

SIGNATURE _____

DPS Form Exh G-4 (Rev 05-01)

Historical Note

New Exhibit G-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-5. Standard Quality Assurance Procedure Intoxilyze, Model 8000 (Option P)**THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)
ARIZONA DEPARTMENT OF PUBLIC SAFETY****STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000****STANDARD QUALITY ASSURANCE PROCEDURE
(OPTION P)**

Display Reads "Push Button to Start"

DIAGNOSTIC TESTS

1. Clock time check.
2. Date check.

OPERATIONAL TESTS

1. Alcohol-free subject test result.
2. Error recognition logic system functioning.
Not a Successfully Completed Test Sequence printed or recorded.
3. Proper sample recognition system.
Not a Successfully Completed Test Sequence printed or recorded.
Deficient sample printed or recorded.
4. Standard alcohol concentration solution.

DPS Form Exh G-5 (Rev 05-01)

Historical Note

New Exhibit G-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-6. Standard Operational and Quality Assurance Procedure, Intoxilyzer Model 8000

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL AND QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

DUPLICATE BREATH TEST WITH CONCURRENT QUALITY ASSURANCE PROCEDURES

SUBJECT NAME _____ DATE _____

AGENCY _____ OPERATOR _____

INSTRUMENT SERIAL # _____ LOCATION _____

SUBJECT TESTS		DIAGNOSTIC CHECKS		CALIBRATION CHECKS
0. _____ AC	TIME _____	_____ PASS	_____ FAIL	0. _____ AC
0. _____ AC	TIME _____	_____ PASS	_____ FAIL	0. _____ AC
0. _____ AC	TIME _____	_____	_____	

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

- () 1. Display reads "PUSH BUTTON TO START".
- () 2. Push Start Test button.
- () 3. Follow automated instructions on instrument display.
- () 4. If test record reads "Successfully Completed Test Sequence" go to step 5

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will be tested again, remove test record and go to step 1

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will not be tested again, go to step 5

- () 5. Remove test record.

Note: A successfully completed test sequence includes the following:

- At least a 15-minute deprivation period.
- Successful concurrent diagnostic checks
- Successful Concurrent Calibration Check Procedures bracketing the duplicate breath test
- Duplicate breath test administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests agreeing within 0.020 alcohol concentration.

DPS Form Exh G-6 (Rev 05-01)

Historical Note

New Exhibit G-6 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-1. Standard Operational Procedure Alco Sensor RBT AZ

OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE
ALCO SENSOR RBT AZ

DUPLICATE BREATH TEST

SUBJECT NAME _____ DATE _____

AGENCY _____ OPERATOR _____

LOCATION _____

RBT AZ SERIAL # _____ ALCO SENSOR AZ SERIAL # _____

TEST RESULTS	0. _____ AC	TIME _____
	0. _____ AC	TIME _____
	0. _____ AC	TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

- () 1. Depress RBT AZ ON button.
- () 2. Depress zero set button, select subject or quick test.
- () 3. Follow RBT AZ and AS AZ display instructions.
- () 4. Enter case # &/or DL # if required.
- () 5. Device temperature registers between 10° C and 40° C.
- () 6.
 - a. If quick test, go to step 7.
 - b. If subject test, repeat steps 3 – 6 for duplicate test.
 - c. If the second subject test is not within 0.020 of the first test, repeat steps 3-6.
 - d. If the second subject test is within 0.020 of the first test, go to step 7.
 - e. If the third subject test, go to step 7.
- () 7. Remove test record when printout is complete.
- () 8. Turn off RBT AZ.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 nor more than 10 minutes and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh H-1 (Rev 05-01)

Historical Note

New Exhibit H-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-2. Standard Calibration Check Procedure Alco Sensor RBT AZ

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)
ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ
STANDARD CALIBRATION CHECK PROCEDURE

AGENCY _____ DATE _____

QA SPECIALIST _____ LOCATION _____

RBT AZ SERIAL # _____ ALCO SENSOR AZ SERIAL # _____

- () 1. Have a standard alcohol concentration solution ready. This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0. _____ AC.
() 2. Depress RBT AZ ON button. Depress Time button. Enter PIN #. Depress zero button.
() 3. Follow RBT AZ and AS AZ display instructions.
() 4. Device temperature registers between 10° C and 40° C.
() 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
() 6. Test results 0. _____ AC.
() 7. Remove test record when printout is complete.
() 8. Turn off RBT AZ.

COMMENTS _____

SIGNATURE _____

DPS Form Exh H-2 (Rev 05-01)

Historical Note

New Exhibit H-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-3. Standard Quality Assurance Procedure Alco Sensor RBT AZ

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ
STANDARD QUALITY ASSURANCE PROCEDURE

AGENCY _____ DATE _____

QA SPECIALIST _____ LOCATION _____

RBT AZ SERIAL # _____ ALCO-SENSOR AZ SERIAL # _____

- () 1. Have a standard alcohol concentration solution ready. This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0. _____ AC.
() 2. Depress RBT AZ ON button. Depress Time button. Enter PIN #. Depress zero button.
() 3. Follow RBT AZ and AS AZ display instructions.
() 4. Device temperature registers between 10° C and 40° C.
() 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
() 6. Test results 0. _____ AC.
() 7. Remove test record when printout is complete.
() 8. Turn off RBT AZ.
() 1. Date and time correct.
() 2. Alcohol-free subject test result 0. _____ AC.
() 3. Proper sample recognition system.
() 4. Fuel cell response time for a standard solution. Standard value: _____ AC. Time _____ sec.
() 5. Controls, displays, and printer worked correctly during the above quality assurance procedures.

COMMENTS _____

SIGNATURE _____

DPS Form Exh H-3 (Rev 05-01)

Historical Note

New Exhibit H-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-4. Standard Calibration Procedure Alco Sensor RBT AZ

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)
ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ
CALIBRATION

AGENCY _____ DATE _____

QA SPECIALIST _____ LOCATION _____

RBT AZ SERIAL # _____ ALCO-SENSOR AZ SERIAL # _____

- () 1. Have a standard alcohol concentration solution ready. This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0. _____ AC.
() 2. Depress RBT AZ ON button.
() 3. Depress Time button, enter PIN #, depress #1 button.
() 4. Follow RBT AZ and AS AZ display instructions.
() 5. Device temperature registers between 23° C and 27° C.
() 6. After a blank reading of 0.000 is displayed and the standard value is displayed, depress F3.
() 7. When AS AZ display flashes "CAL", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
() 8. Remove test record when printout is complete.
() 9. Run a calibration check on the Standard Calibration Check Procedure.
Test results: _____ AC.

COMMENTS _____

SIGNATURE _____

DPS Form Exh H-4 (Rev 05-01)

Historical Note
New Exhibit H-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit I-1. Operational Checklist Standard Operational Procedure, Arizona Department of Public Safety, Intoxilyzer Model 9000, Duplicate Breath Test

**OPERATIONAL CHECKLIST
STANDARD OPERATIONAL PROCEDURE
ARIZONA DEPARTMENT OF PUBLIC SAFETY
INTOXILYZER MODEL 9000
DUPLICATE BREATH TEST**

SUBJECT NAME _____ DATE _____

AGENCY _____ OPERATOR & BADGE _____

INTOXILYZER SERIAL # _____ DEPRIVATION BY _____

- 1. Ensure proper deprivation period
- 2. Push the start button on the screen
- 3. Follow automated prompts on the instrument display

Note: Duplicate breath tests shall be administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

COMMENTS:

SIGNATURE _____

DPS Form Exh I-1 (Iss 19-01)

Historical Note
Exhibit I-1 made by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

Exhibit I-2. Arizona Department of Public Safety, Intoxilyzer Model 9000, Periodic Maintenance, Standard Calibration Check and Standard Quality Assurance Procedure

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
INTOXILYZER MODEL 9000

PERIODIC MAINTENANCE, STANDARD CALIBRATION CHECK AND
STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____

- 1. Ensure that gas tank is attached and contains a standard alcohol concentration _____ AC.

DIAGNOSTIC TESTS

- 1. Clock time check
- 2. Date check

OPERATIONAL TESTS

- 1. Deficient Subject Test (Proper Sample Recognition):
Deficient Sample printed
- 2. Alcohol-free Subject Test (Proper Sample Recognition):
0. _____ AC
- 3. Mouth Alcohol Subject Test (Proper Sample Recognition):
Invalid Sample – Begin new deprivation period printed
- 4. Radio Frequency Interference Test (Error Recognition):
RFI Detect printed
- 5. Standard Calibration Check:
0. _____ AC
- 6. Air Blanks Completed
- 7. Timer Reset

Not a Successfully Completed Test Sequence will be printed.

Instrument is operating properly and accurately. YES _____ NO _____

COMMENTS:

SIGNATURE _____

DPS Form Exh I-2 (Iss 19-01)

Historical Note

Exhibit I-2 made by final rulemaking at 26 A.A.R. 723, effective June 1, 2020 (Supp. 20-2).

41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.
2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.
3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.
4. Make rules necessary for the operation of the department.
5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.
6. Appoint a deputy director with the approval of the governor.
7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.
8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.
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.
10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.
11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.
2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.
4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.
5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.
6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.
8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.
9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.
10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.
12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

28-1322. Preliminary breath tests; rules on approval of devices

- A. A law enforcement officer who has reasonable suspicion to believe that a person has committed a violation of section 28-1381 or 28-1382 may request that the person submit to a preliminary breath test or tests before an arrest.
- B. In addition to a breath test or tests, the officer may require that the person submit to further testing pursuant to section 28-1321.
- C. The director of the department of public safety shall adopt rules prescribing the approval of quantitative preliminary breath testing devices.

28-1323. Admissibility of breath test or other records

A. The results of a breath test administered for the purpose of determining a person's alcohol concentration are admissible as evidence in any trial, action or proceeding on establishing the following foundational requirements:

1. The test was performed using a quantitative breath testing device approved by the department of health services or the department of public safety. A properly authenticated certification by the department of health services or the department of public safety or judicial notice of department of health services or department of public safety rules is sufficient to establish this requirement.
2. The operator who conducted the test possessed a valid permit issued by the department of health services or the department of public safety to operate the device used to conduct the test.
3. Duplicate tests were administered and the test results were within 0.02 alcohol concentration of each other or an operator observed the person charged with the violation for twenty minutes immediately preceding the administration of the test.
4. The operator who conducted the test followed an operational checklist approved by the department of health services or the department of public safety for the operation of the device used to conduct the test. The testimony of the operator is sufficient to establish this requirement.
5. The device used to conduct the test was in proper operating condition. Records of periodic maintenance that show that the device was in proper operating condition are admissible in any proceeding as prima facie evidence that the device was in proper operating condition at the time of the test. Calibration checks with a standard alcohol concentration solution bracketing each person's duplicate breath test are one type of records of periodic maintenance that satisfies the requirements of this section. The records are public records.

B. Compliance with subsection A of this section is the only requirement for the admission in evidence of a breath test result.

C. The inability of any person to obtain manufacturer's schematics and software for a quantitative breath testing device that is approved as prescribed in subsection A of this section shall not affect the admissibility of the results of a breath test pursuant to this section.

D. Records that may be obtained or that are otherwise maintained pursuant to section 28-1327 are admissible as evidence in any trial, action or proceeding.

28-1324. Breath test rules

The director of the department of public safety shall adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration. The rules shall include:

1. The approval of quantitative breath testing devices.
2. Procedures for ensuring the accuracy of results obtained from approved breath testing devices.
3. Qualifications for persons who conduct breath tests.
4. Qualifications for persons who instruct others in the operation of breath testing devices.

28-1325. Breath test operator permits

A. The director of the department of public safety shall issue permits to operators who have received approved instruction and who have demonstrated their ability to accurately operate an approved breath testing device.

B. The director of the department of public safety may revoke the permit of a person who fails to operate a breath testing device according to the rules adopted by the director of the department of public safety.

28-1326. Blood test; rules; permits

- A. The director of the department of public safety shall adopt rules prescribing the approval of methods for the analysis of blood or other bodily substances to determine blood alcohol concentration.
- B. The director of the department of public safety shall issue a permit to an analyst who has demonstrated the ability to accurately analyze blood or other bodily substances for alcohol concentration.
- C. The director of the department of public safety may revoke the permit of an analyst who either:
1. Has demonstrated an inability to accurately analyze blood or other bodily substances for alcohol concentration.
 2. Fails to analyze blood or other bodily substances for alcohol concentration according to rules adopted by the director of the department of health services.

BOARD OF EXECUTIVE CLEMENCY

Title 5, Chapter 4, Articles 1-3



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 7, 2021

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

FROM: Council Staff

DATE: June 11, 2021

SUBJECT: BOARD OF EXECUTIVE CLEMENCY
Title 5, Chapter 4, Articles 1-3

Summary:

This Five-Year Review Report (5YRR) from the Board of Executive Clemency (Board) relates to all rules in Title 5, Chapter 4, Articles 1 through 3. Specifically, the rules in Article 1 relate to general provision including definitions and procedures for all hearings before the Board. The rules in Article 2 relate to the process of applying for and being considered by the Board for a pardon recommendation. The rules in Article 3 relate to the process for initiating, scheduling, and conducting a rescission or revocation hearing and the allowable votes at the end of either hearing.

The Board's previous 5YRR, approved by the Council in August 2016, did not indicate a proposed course of action.

Proposed Action

The Board does not propose to take any action regarding these rules.

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

Yes. The Board cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board, the Department of Public Safety, the Federal Bureau of Investigation (FBI) and any individual seeking an executive clemency action would bear the cost of implementation of the rules. The Board determined that the actual cost incurred by each of these entities is minimal.

The majority of the costs related to these rules fall on the Board. For a pardon, costs to the Board include copying the application. The FBI and DPS conduct a criminal inquiry on the applicant, generating minimal costs. The cost to the individual is for printing documents and postage to send documents to the Board; however, an individual can deliver an application in person, or through a form on the Board's website at no cost.

There is no consumer cost for a rescission or revocation hearing. A member of the public may want to send in a letter of support or opposition; however, they may submit it through a form on the Board's website at no cost.

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

The Board has determined that probable benefits of the rules outweigh the probable costs of the rules and the rules impose the least burden and costs to the regulated persons by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective. The rules help people coming before the Board understand their rights and obligations.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it received no written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates the rules are clear, concise, and understandable.

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

The Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Board indicates the rules are currently 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 Board indicates there are no corresponding federal laws. Instead, the Board indicates that the rules comply with case law from the United States Supreme Court.

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 Board states it does not issue regulatory permits, licenses, or agency authorizations.

11. Conclusion

The Board indicates the rules in Title 5, Chapter 4, Articles 1 through 3 are clear, concise, understandable, consistent, effective, and enforced as written. The Board does not propose to take any action on these rules.

Council staff recommends approval of this report.

Douglas A. Ducey
GOVERNOR



Mina Mèndez
CHAIR

ARIZONA
BOARD OF EXECUTIVE CLEMENCY

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Phoenix, Arizona 85007-3000
(602) 542-5656
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May 17, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: Board of Executive Clemency, Title 5, Chapter 4, Articles 1-3.

Dear Chair Sornsins:

Please find enclosed the Five-Year-Review Report of the Arizona Board of Executive Clemency for Title 5, Chapter 4, Articles 1-3, which is due on May 31, 2021.

The Board of Executive Clemency hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Kathryn Ptak at (602)542-5656 or kblades@boec.az.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn Ptak".

Kathryn Ptak
Executive Director

Board of Executive Clemency

5-YEAR-REVIEW REPORT

Title 5 Corrections
Chapter 4 Board of Executive Clemency
Articles 1, 2, and 3
May 2021

1. **Authorization of the rule by existing statutes:**

Board rules are authorized under A.R.S. §1-301, 31-201, 401, 402, 403, 415, 416, 417, 441, 442, 443, 38-431, 431.01, 431.02, 431.03, 431.05, 41- 1005(A), 1604.06, and 1604.09.

2. **The objective of each rule:**

Rule	Objective
R5-4-101	The objective of the rule is to define terms and phrases to make the rules understandable to a reader, achieve clarity in the rules, and afford consistent interpretation.
R5-4-102	The objective of the rule is to provide the procedural elements applicable to all types of hearings and to ensure Board procedures comply with state statute.
R5-4-201	The objective of the rule is to set forth the process of applying for and being considered by the Board for a pardon recommendation.
R5-4-301	The objective of the rule is to state the process for initiating, scheduling, and conducting a rescission hearing and the allowable votes at the end of the hearing.
R5-4-302	The objective of the rule is to state the process for initiating, scheduling, and conducting a revocation hearing, and the allowable votes at the end of the hearing.

3. **Are the rules effective in achieving their objectives?**

Yes.

4. **Are the rules consistent with other rules and statutes?**

Yes.

5. **Are the rules enforced as written?**

Yes.

6. **Are the rules clear, concise, and understandable?**

Yes.

7. **Has the agency received written criticisms of the rules within the last five years?**

No.

8. Economic, small business, and consumer impact comparison:

The Board, the Department of Public Safety, the Federal Bureau of Investigation and any individual seeking an executive clemency action would bear the cost of implementation of the rules. The Board determined that the actual cost incurred by each of these entities is minimal.

The majority of the costs related to these rules fall on the Board. For a pardon, costs to the Board include copying the application. The FBI and DPS conduct a criminal inquiry on the applicant, generating minimal costs. The cost to the individual is for printing documents and postage to send documents to the Board; however, an individual can deliver an application in person, or through a form on the Board's website at no cost.

There is no consumer cost for a rescission or revocation hearing. A member of the public may want to send in a letter of support or opposition; however, they may submit it through a form on the Board's website at no cost.

9. Has the agency received any business competitiveness analyses of the rules?

No.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The agency's previous five-year review report did not indicate any course 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 the regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Board has determined that probable benefits of the rules outweigh the probable costs of the rules and the rules impose the least burden and costs to the regulated persons by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective. The rules help people coming before the Board understand their rights and obligations.

12. Are the rules more stringent than corresponding federal laws?

No federal laws applied to the Board. The rules comply with case law from the United States Supreme Court.

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. § 40-1037 or explain why the agency believes an exception applies:

The Board does not issue regulatory permits, licenses, or agency authorization.

14. Proposed course of action

None.

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

(Authority: A.R.S. § 31-401 et seq.)

Article 1 through Article 7 consisting of Sections R5-4-101 through R5-4-705 adopted effective June 26, 1980.

Former Article 1 consisting of Sections R5-4-01, R5-4-03 through R5-4-09 repealed effective June 26, 1980.

ARTICLE 1. GENERAL PROVISIONS

Section	
R5-4-101.	Definitions
R5-4-102.	Board Hearings
R5-4-103.	Repealed
R5-4-104.	Repealed
R5-4-105.	Repealed
R5-4-106.	Repealed
R5-4-107.	Repealed
R5-4-108.	Repealed
R5-4-109.	Repealed

ARTICLE 2. PARDON

Article 2, consisting of Section R5-4-201, adopted effective September 22, 1997 (Supp. 97-3).

Article 2, consisting of Sections R5-4-201 and R5-4-202, repealed effective May 31, 1991 (Supp. 91-2).

Section	
R5-4-201.	Pardon

ARTICLE 3. RECISSION OR REVOCATION

Article 3, consisting of Sections R5-4-301 and R5-4-302, adopted effective September 22, 1997 (Supp. 97-3).

Article 3, consisting of Sections R5-4-301 thru R5-4-306, repealed effective May 31, 1991 (Supp. 91-2).

Section	
R5-4-301.	Rescission Hearings
R5-4-302.	Revocation Hearings

ARTICLE 4. REPEALED

Article 4, consisting of Sections R5-4-401 thru R5-4-404, repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 5. REPEALED

Article 5, Section R5-4-501 repealed effective May 31, 1991 (Supp. 91-2); Sections R5-4-502 and R5-4-503 repealed effective September 22, 1997 (Supp. 97-3).

R5-4-501.	Repealed
R5-4-502.	Repealed
R5-4-503.	Repealed

ARTICLE 6. REPEALED

Article 6, consisting of Sections R5-4-601 thru R5-4-603, repealed effective September 22, 1997 (Supp. 97-3).

R5-4-601.	Repealed
R5-4-602.	Repealed
R5-4-603.	Repealed

ARTICLE 7. REPEALED

Article 7, Sections R5-4-701 thru R5-4-704 repealed effective May 31, 1991 (Supp. 91-2); Section R5-4-705 repealed effective September 22, 1997 (Supp. 97-3).

R5-4-701.	Repealed
R5-4-702.	Repealed

R5-4-703.	Repealed
R5-4-704.	Repealed
R5-4-705.	Repealed

ARTICLE 8. REPEALED

Article 8, Sections R5-4-801 thru R5-4-806 repealed effective May 31, 1991 (Supp. 91-2); Section R5-4-807 repealed effective September 22, 1997 (Supp. 97-3).

Article 8 consisting of Sections R5-4-801 through R5-4-807 adopted effective October 17, 1984.

Former Article 8 consisting of Sections R5-4-801 through R5-4-808 adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5).

R5-4-801.	Repealed
R5-4-802.	Repealed
R5-4-803.	Repealed
R5-4-804.	Repealed
R5-4-805.	Repealed
R5-4-806.	Repealed
R5-4-807.	Repealed

ARTICLE 1. GENERAL PROVISIONS**R5-4-101. Definitions**

In this Chapter, unless otherwise specified:

1. "Applicant" means an individual who asks the governor to grant a pardon.
2. "Board" means the Arizona Board of Executive Clemency, as established by A.R.S. § 31-401(A).
3. "Department" means the Arizona Department of Corrections.
4. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
5. "Inmate" means an individual who is under the jurisdiction of the Department, including an individual in custody or on parole, home arrest, work furlough, or community supervision.
6. "Pardon" means an action by the governor that absolves an individual of the legal consequences of a crime for which the individual was convicted.
7. "Presiding Officer" means either the Chairperson of the Board or the Chairperson of a Board panel assigned to conduct a hearing.
8. "Release" means parole, home arrest, work furlough, or community supervision.
9. "Rescission" means an act of the Board that voids a previously made release decision before the inmate is released.
10. "Request to rescind" means a document asking the Board for a rescission.
11. "Revocation" means an act by the Board that terminates an inmate's release because of a violation of a release condition.
12. "Street time" means the interval between when an inmate is released on parole and the parole is revoked or completed.
13. "Warrant" means a document that specifies an alleged violation of a condition of a release.
14. "Work day" means every day except Saturdays, Sundays, and state holidays listed at A.R.S. § 1-301.

Historical Note

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-102. Board Hearings

- A. The Board shall ensure that all hearings are open to the public as required by A.R.S. § 38-431 et seq.
- B. Unless otherwise provided by law, the Board shall conduct a hearing in an informal manner without adherence to the rules of evidence required in a judicial proceeding.
- C. The Board shall allow an inmate to be represented by counsel at a hearing.

Historical Note

Adopted effective June 26, 1980 (Supp. 80-3). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-103. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-104. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-105. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-106. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-107. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-108. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-109. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 2. PARDON**R5-4-201. Pardon**

- A. Unless prohibited by law, an individual who was convicted of an Arizona felony offense may apply for a pardon.
- B. To apply for a pardon, an eligible individual shall submit to the Board a completed application form obtained from the Board.
- C. In addition to the application form required under subsection (B), an applicant shall submit other information and documents that the Board requests to assist it in deciding whether to recommend a pardon.

- D. If an inmate applies for a pardon, the Board shall request that the Department review the application and verify whether the inmate is eligible to apply for the pardon.
- E. After receiving a complete application from an eligible applicant, the Board shall schedule a hearing and provide advance written notice to the applicant of the date and location of the hearing.
- F. At the hearing, the Board shall take one of the following actions:
 1. Vote to deny recommending that the governor grant a pardon and notify the applicant in writing of the Board's decision within 10 work days.
 2. Vote to recommend that the governor grant a pardon and notify the applicant in writing of the Board's decision within 10 work days.
- G. If the Board votes to recommend a pardon, the Presiding Officer shall designate a Board member to prepare and send to the governor a letter of recommendation. The letter of recommendation may include a statement of individual Board members' reasons for voting to recommend a pardon. Board members who voted not to recommend a pardon may prepare and send letters of dissent to the governor.
- H. If the governor denies a pardon, the Board shall notify the applicant in writing of the governor's decision within 10 work days after receiving notice of the governor's decision.
- I. If the Board votes not to recommend a pardon for an applicant or if the governor denies a pardon, the applicant shall not apply again for a pardon for three years from the date of the Board's decision.

Historical Note

Former Section R5-4-201 repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

ARTICLE 3. RECISSION OR REVOCATION**R5-4-301. Rescission Hearings**

- A. An officer of the Department or a member of the Board may initiate the rescission process by submitting to the Board a request to rescind a previously made release decision that:
 1. Alleges:
 - a. The inmate to be released has violated the law,
 - b. The inmate to be released has violated a disciplinary rule of the Department,
 - c. The inmate to be released is not able to meet a condition of release, or
 - d. The Board lacked accurate or complete information when the Board made the release decision, and
 2. Includes a list of documents and items to be offered as evidence and witnesses who will be called to testify.
- B. After the Board receives a completed request to rescind, the Board shall schedule a rescission hearing unless a hearing officer designated by the Board to conduct a probable cause hearing determines there is no probable cause for the requested rescission, in which case, the request to rescind is deemed denied. The Board shall provide advance notice of the date and location of the rescission hearing to the inmate and the Department.
- C. The Board shall conduct the rescission hearing. The inmate may request that the hearing be continued for good cause. The Board may continue the hearing for good cause at any time.
- D. At the close of the rescission hearing, the Board shall take one of the following actions:

Board of Executive Clemency

1. Find that the allegation in the request to rescind is not true, deny the request to rescind, and allow to stand the Board's previous decision to grant release to the inmate.
2. Find that one or more of the allegations in the request to rescind are true and void the Board's previous decision to grant release to the inmate. The Department shall continue to hold the inmate in secure custody as provided by law.
3. Find that one or more of the allegations in the request to rescind are true but allow to stand the Board's previous decision to grant release to the inmate with or without additional conditions.

Historical Note

Former Section R5-4-301 repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-302. Revocation Hearings

- A. An officer of the Department or a member of the Board may initiate the revocation process by requesting that the Department issue to the Board a warrant that:
 1. Alleges an inmate violated a condition of the inmate's release; and
 2. Lists documents and items to be offered as evidence and witnesses who will be called to testify.
- B. After the Department executes the warrant and it is determined there is probable cause to believe the inmate violated a condition of the inmate's release or the inmate waives a probable cause hearing, the Board shall schedule a revocation hearing. The Board shall provide advance notice of the date and location of the revocation hearing to the inmate and the Department.
- C. The Board shall conduct the revocation hearing. The inmate may request that the hearing be continued for good cause. The Board may continue the hearing for good cause at any time.
- D. At the close of the revocation hearing, the Board shall take one of the following actions:
 1. Find that each allegation in the warrant is not true and direct, in writing, that the Department release the inmate from secure custody to parole, home arrest, work furlough, or community supervision status.
 2. Find that one or more of the allegations in the warrant are true and revoke the inmate's release. The Department shall immediately place the inmate in secure custody and hold the inmate as provided by law.
 3. In the case of an inmate on parole, find that one or more of the allegations in the warrant are true and revoke the inmate's parole but place the inmate on home arrest. The Department shall hold the inmate in secure custody pending the inmate's release on home arrest.
 4. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that one or more of the allegations in the warrant are true but reinstate the inmate's release with or without additional conditions.
- E. If the Board revokes an inmate's parole status under subsection (D)(2) or (D)(3), the Board may determine whether the circumstances merit forfeiture of some or all street-time credits earned by the inmate while on parole.

Historical Note

Former Section R5-4-302 repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final

rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-303. Repealed**Historical Note**

Former Section R5-4-303 repealed effective May 31, 1991 (Supp. 91-2).

R5-4-304. Repealed**Historical Note**

Former Section R5-4-304 repealed effective May 31, 1991 (Supp. 91-2).

R5-4-305. Repealed**Historical Note**

Former Section R5-4-305 repealed effective May 31, 1991 (Supp. 91-2).

R5-4-306. Repealed**Historical Note**

Former Section R5-4-306 repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 4. REPEALED

Article 4, consisting of Sections R5-4-401 thru R5-4-404, repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 5. REPEALED**R5-4-501. Repealed****Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-502. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

R5-4-503. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 6. REPEALED**R5-4-601. Repealed****Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

R5-4-602. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

R5-4-603. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 7. REPEALED**R5-4-701. Repealed****Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-702. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-703. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-704. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-705. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 8. REPEALED**R5-4-801. Repealed****Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-802. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-803. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-804. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-805. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-806. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-807. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective September 22, 1997 (Supp. 97-3).

1-301. Holidays enumerated

A. The following days shall be holidays:

1. Sunday of each week.
2. January 1, "New Year's Day".
3. Third Monday in January, "Martin Luther King, Jr./Civil Rights Day".
4. Third Monday in February, "Lincoln/Washington Presidents' Day".
5. Second Sunday in May, "Mothers' Day".
6. Last Monday in May, "Memorial Day".
7. June 2, "Native American Day".
8. Third Sunday in June, "Fathers' Day".
9. July 4, "Independence Day".
10. First Sunday in August, "American Family Day".
11. First Monday in September, "Labor Day".
12. September 17, "Constitution Commemoration Day".
13. Second Monday in October, "Columbus Day".
14. November 11, "Veterans' Day".
15. Fourth Thursday in November, "Thanksgiving Day".
16. December 25, "Christmas Day".

B. When any of the holidays enumerated in subsection A of this section falls on a Sunday, the following Monday shall be observed as a holiday, with the exception of the holidays enumerated in subsection A, paragraphs 1, 5, 7, 8, 10 and 12 of this section.

C. When any of the holidays enumerated in subsection A, paragraphs 2, 9, 14 and 16 of this section falls on a Saturday, the preceding Friday shall be observed as a holiday.

D. When the holiday enumerated in subsection A, paragraph 7 of this section falls on a day other than Sunday, the Sunday following June 2 shall be observed as that holiday.

E. When the holiday enumerated in subsection A, paragraph 12 of this section falls on a day other than Sunday, the Sunday preceding September 17 shall be observed as that holiday.

31-201. Definitions

As used in this chapter, unless the context otherwise requires:

1. "Department" means the state department of corrections.
2. "Director" means the director of the department.

31-401. Board of executive clemency; qualifications; appointment; officers; quorum; meeting

A. The board of executive clemency is established consisting of five members who are appointed by the governor pursuant to this subsection and section 38-211.

B. The members of the board shall serve on a full-time basis and receive compensation as determined pursuant to section 38-611, subsection A. Beginning from and after December 31, 2013, members of the board are eligible for any benefits that are provided to state employees pursuant to section 38-651. Each member shall be appointed on the basis of broad professional or educational qualifications and experience and shall have demonstrated an interest in the state's correctional program. No more than two members from the same professional discipline shall be members of the board at the same time.

C. Each member appointed to the board shall complete a four-week course relating to the duties and activities of the board. The course shall be designed and administered by the chairman of the board and shall be conducted by the office of the board of executive clemency and the office of the attorney general. The course shall include training in all statutes that pertain to the board and participation in a decision making workshop.

D. Members shall be appointed for a term of five years to expire on the third Monday in January of the appropriate year.

E. A member of the board may be removed by the governor for cause.

F. The governor shall select a member of the board as chairman. The chairman shall select other officers as are advisable. The term of the chairman is two years, except that the chairman may be removed as chairman at the pleasure of the governor. If a board member's term expires while the member is serving as chairman, the chair shall be deemed vacant and a new chairman shall be selected.

G. The board may adopt rules, not inconsistent with law, as it deems proper for the conduct of its business. The board may from time to time amend or change the rules and publish and distribute the rules as provided by the administrative procedures act.

H. The board shall meet at least once a month at the state prison and at other times or places as the board deems necessary.

I. The presence of three members of the board constitutes a quorum, except that the chairman may designate that the presence of two members of the board constitutes a quorum.

J. If two members of the board constitute a quorum pursuant to subsection I of this section and the two members do not concur on the action under consideration, the chairman of the board, if the chairman is not one of the members who constituted the quorum and after reviewing the information considered by the two members, shall cast the deciding vote. If the chairman of the board is one of the two members constituting a quorum at a hearing under subsection I of this section, and there is not concurrence on the action under consideration, the action fails.

K. The board shall employ an executive director whose compensation shall be determined pursuant to section 38-611. The executive director serves at the pleasure of the board and reports to the board through the chairman of the board.

31-402. Powers of board; powers and duties of governor; powers and duties of executive director

A. For all persons who committed felony offenses before January 1, 1994, the board of executive clemency shall have exclusive power to pass on and recommend reprieves, commutations, paroles and pardons. No reprieve, commutation or pardon may be granted by the governor unless it has first been recommended by the board.

B. For all persons who committed felony offenses before January 1, 1994, all applications for reprieves, commutations and pardons made to the governor shall be at once transmitted to the chairman of the board, and the board shall return the applications with its recommendation to the governor. All applications for reprieves, commutations and pardons made to the governor shall include documentation that the victim or the victim's family was notified pursuant to section 31-411, subsection H.

C. For all persons who committed felony offenses on or after January 1, 1994, in addition to the powers and duties prescribed in subsection A of this section, the board of executive clemency:

1. Is vested with the powers and duties of the board of pardons and paroles as they existed before January 1, 1994 to carry out the provisions of articles 3, 4.1, 5, 6 and 7 of this chapter.
2. After a hearing for which the victim, county attorney and presiding judge are given notice and an opportunity to be heard, may make recommendations to the governor for commutation of sentence after finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the offender will conform the offender's conduct to the requirements of the law.
3. Shall receive petitions from individuals for whom the court has entered a special order allowing the person to petition the board pursuant to section 13-603, subsection L and may make recommendations to the governor.
4. Shall receive petitions from individuals, organizations or the department for review and commutation of sentences and pardoning of offenders in extraordinary cases and may make recommendations to the governor.
5. Shall receive petitions from the state department of corrections alleging that an offender has violated the offender's terms and conditions of community supervision and has lapsed or is probably about to lapse into criminal ways or company. If the board determines that an offender on community supervision has violated the terms and conditions of community supervision the board may do any of the following:
 - (a) If the offender has not committed an additional offense, place the offender on electronic monitoring and order the offender to participate in a community accountability program pursuant to section 41-1609.05.
 - (b) Revoke community supervision and return the offender to prison for the remainder of the offender's community supervision.
 - (c) Impose additional terms and conditions on the offender while keeping the offender on community supervision. If there is reasonable cause to believe that an offender who has been kept on community supervision has violated any term or condition of community supervision, any member of the board may petition the board to revoke community supervision. After a petition to revoke has been submitted, the chairman may issue a summons directing the offender to appear on a specified date for a revocation hearing or may issue a warrant for the offender's arrest. Nothing in this subsection limits the state department of corrections' authority with respect to submitting revocation petitions or issuing revocation warrants.

D. Any recommendation for commutation that is made unanimously by the members present and voting and that is not acted on by the governor within ninety days after the board submits its recommendation to the governor automatically becomes effective.

E. The executive director shall perform all administrative, operational and financial functions for the board.

F. The executive director may employ case analysts as deemed necessary within the limits of legislative appropriation and subject to title 41, chapter 4, article 4. The analysts shall aid the board in making investigations, in securing information and in performing necessary administrative functions to assist the board in passing on applications for parole and commutation.

G. The executive director may employ hearing officers as deemed necessary within the limits of legislative appropriation and subject to title 41, chapter 4, article 4. The hearing officers shall conduct probable cause hearings on parole, work furlough, community supervision and home arrest revocations or rescissions. Hearing officers shall assist the board in making investigations, securing information and performing necessary administrative functions.

31-403. Commutation; restrictions on consideration

A. A person who is otherwise eligible for commutation and who is denied a commutation of sentence recommendation shall not petition or be considered by the board for commutation of that sentence for a period of five years following the date of the board's denial of the commutation recommendation if the offense for which the commutation recommendation was denied involved any of the following:

1. Death in violation of section 13-1104 or 13-1105.
2. Serious physical injury if the person was sentenced pursuant to section 13-704.
3. A dangerous crime against children as defined in section 13-705.
4. A felony offense in violation of title 13, chapter 14 or 35.1.

B. Notwithstanding subsection A, paragraph 2 of this section, if, in its sole discretion, the board determines that the person committed an offense that involved serious physical injury as defined in section 13-105 and that the person was not sentenced pursuant to section 13-704, the board may order that the person shall not petition or be considered by the board for commutation of that sentence for a period of five years following the date of the board's denial of the commutation recommendation.

C. Notwithstanding subsection A or B of this section, the board, at the time of denial, may lengthen the five year period of time prescribed in subsection A or B of this section to a period of up to ten years, except that if the offense for which commutation was denied involved a violation of an offense listed in subsection A, paragraph 1 of this section, the board may lengthen the period of time to a period of time that is greater than ten years and that is specified by the board by one of the following votes:

1. A majority affirmative vote if four or more members consider the action.
2. A unanimous affirmative vote if three members consider the action.
3. A unanimous affirmative vote if two members consider the action pursuant to section 31-401, subsection I and the chairman concurs after reviewing the information considered by the two members. If the chairman is one of the two members constituting a two member quorum under section 31-401, subsection I, and both the chairman and the other member vote to lengthen the five year period to a period of time greater than ten years, no further action shall be taken and the decision on whether to lengthen the five year period shall be considered by the board at a meeting at which at least three members are present and voting.

D. The board may waive the provisions of subsections A, B and C of this section if any of the following applies:

1. The person is in imminent danger of death due to a medical condition, as determined by the board.
2. The person is the subject of a warrant of execution.
3. The sentence for which commutation is sought is the subject of a special order issued by the court pursuant to section 13-603, subsection L.

E. This section applies only to offenses that are committed on or after January 1, 2006.

31-415. Violation of parole or community supervision; warrant for retaking parolee or offender on community supervision

If the parole clerk of the department of corrections or the director of the department of corrections, or the board of executive clemency or any member thereof, has reasonable cause to believe that a paroled prisoner or an offender on community supervision has violated his parole or community supervision and has lapsed or is probably about to lapse into criminal ways or company, then any of such persons may issue a warrant for retaking the prisoner or offender at any time prior to expiration of the maximum sentence or term of community supervision, which time shall be specified in the warrant.

31-416. Execution of warrant to take paroled prisoner or offender on community supervision; expenses

A. Any officer of the department of corrections or any officer authorized to serve criminal process within this state, to whom the warrant provided by section 31-415 is delivered, shall execute the warrant by taking the paroled prisoner or offender on community supervision and returning him to the prison, within the time specified in the warrant.

B. The officer, whether an officer of the department of corrections or otherwise, shall be entitled to reimbursement for reasonable expenses incurred in retaking and transporting the prisoner from the place of arrest to the prison, and such expenses shall be paid from funds standing to the credit of the paroled prisoner, if any, otherwise from funds of the department of corrections.

31-417. Notification to board of parole violator; hearing; reimprisonment

At the meeting held at the state prison of the board of executive clemency next following the retaking of a paroled prisoner or an offender on community supervision, the board shall be notified that the prisoner or offender has been retaken. If the paroled prisoner or offender on community supervision has been returned to the prison, the paroled prisoner shall be given an opportunity to appear before the board, and the board may after an opportunity has been given, or in case the prisoner has not yet been returned, declare the parolee or offender on community supervision delinquent. The prisoner may be thereafter imprisoned in the prison for a period equal to the prisoner's unexpired maximum term of sentence at the time the parole was granted, unless sooner released or discharged.

31-441. Application for pardon; statement of facts proved at trial

When an application is made for a pardon, the board of executive clemency may require the judge of the court before whom the applicant was convicted, or the county attorney by whom the action was prosecuted, to furnish the board, without delay, a statement of facts proved on the trial and any other facts having reference to the propriety of granting or refusing the pardon.

31-442. Application for pardon; notice; exceptions

A. At least ten days before the board of executive clemency acts upon an application for a pardon, written notice of intention to apply therefor, signed by the person applying, shall be served on the county attorney of the county where the applicant was convicted, and proof of the service must be presented to the board by affidavit. Unless dispensed with by the governor, a copy of the notice shall also be published for thirty days from the first publication, in a paper in the county in which the conviction was had.

B. The provisions of this section shall not apply:

1. When there is imminent danger of the death of the person convicted or imprisoned.
2. When the term of imprisonment of the applicant is within ten days of expiration.

31-443. Power of governor to grant reprieves, commutations and pardons

The governor, subject to any limitations provided by law, may grant reprieves, commutations and pardons, after conviction, for all offenses, except impeachment, upon conditions, restrictions and limitations he deems proper.

38-431. Definitions

In this article, unless the context otherwise requires:

1. "Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in section 38-431.03 and the auditor general as provided in section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.

3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.

4. "Meeting":

(a) Means the gathering, in person or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to that action.

(b) Includes:

(i) A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action.

(ii) An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action.

5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.

6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or a political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

38-431.01. Meetings shall be open to the public

A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, the minutes or recording shall include:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, including a record of how each member voted. The minutes shall also include the names of the members who propose each motion and the names of the persons, as given, who make statements or present material to the public body and a reference to the legal action about which they made statements or presented material.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to section 38-431.03, subsection A, paragraphs 4, 5 and 7 and other matters as may be deemed appropriate by the public body.

D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.

E. A public body of a city or town with a population of more than two thousand five hundred persons shall:

1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either:

- (a) A statement describing the legal actions taken by the public body of the city or town during the meeting.
- (b) Any recording of the meeting.

2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise specifically provided by this article.

3. Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either:

- (a) A statement describing legal action, if any.
- (b) A recording of the meeting.

F. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall conspicuously post open meeting law materials prepared and approved by the attorney general on their website. A person elected or appointed to a public body shall review the open meeting law materials at least one day before the day that person takes office.

H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

I. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

J. Any posting required by subsection E of this section must remain on the applicable website for at least one year after the date of the posting.

38-431.02. Notice of meetings

A. Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of this state, including governing bodies of charter schools, shall:

(a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

2. The public bodies of the counties and school districts shall:

(a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

3. Special districts that are formed pursuant to title 48:

(a) May conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) May post all public meeting notices on their website and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

(c) If a statement or notice is not posted pursuant to subdivision (a) or (b) of this paragraph, shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give additional public notice as is reasonable and practicable as to all meetings.

4. The public bodies of the cities and towns shall:

(a) Conspicuously post a statement on their website or on a website of an association of cities and towns stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) Post all public meeting notices on their website or on a website of an association of cities and towns and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

B. If an executive session is scheduled, a notice of the executive session shall state the provision of law authorizing the executive session, and the notice shall be provided to the:

1. Members of the public body.
2. General public.

C. Except as provided in subsections D and E of this section, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.

D. In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I of this section.

E. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A of this section, and if, before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.

F. A public body that intends to meet for a specified calendar period, on a regular day, date or event during the calendar period, and at a regular place and time, may post public notice of the meetings at the beginning of the period. The notice shall specify the period for which notice is applicable.

G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours before the meeting, except in the case of an actual emergency under subsection D of this section. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.

H. Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.

I. Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. The agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege.

J. Notwithstanding subsections H and I of this section, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, if the matter was not listed on the agenda and a statement setting forth the reasons necessitating the discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately before the executive session.

K. Notwithstanding subsection H of this section, the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, if:

1. The summary is listed on the agenda.
2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

38-431.03. Executive sessions; definitions

A. On a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.
6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.
7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.
8. Discussion or consideration of matters relating to school safety operations or school safety plans or programs.
9. Discussions or consultations with designated representatives of the public body in order to discuss security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body. Records, documentation, notes, or other materials made by, or provided to, the representatives pursuant to this paragraph are confidential and exempt from public disclosure under this chapter and title 39, chapter 1.

B. Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body that met in executive session.
2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.
3. The auditor general on a request made in connection with an audit authorized as provided by law.
4. A county attorney or the attorney general when investigating alleged violations of this article.

C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

E. Except as provided in section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session that is not described in the notice of the executive session.

F. Disclosure of executive session information pursuant to this section or section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or section 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

G. For the purposes of this section:

1. "Critical infrastructure" has the same meaning prescribed in section 41-1801.
2. "Information technology" has the same meaning prescribed in section 18-101.

38-431.05. Meeting held in violation of article; business transacted null and void; ratification

A. All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

B. A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.
3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.
4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
2. Order or rule of the Arizona game and fish commission that does the following:
 - (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
 - (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
 - (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.
3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by section 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees established under section 3-1086.
13. Fees established under sections 41-4010 and 41-4042.
14. Rule or other matter relating to agency contracts.
15. Fees established under section 32-2067 or 32-2132.
16. Rules made pursuant to section 5-111, subsection A.
17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

18. Fees or charges established under section 41-511.05.
 19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
 20. Fee schedules established pursuant to section 36-3409.
 21. Procedures of the state transportation board as prescribed in section 28-7048.
 22. Rules made by the state department of corrections.
 23. Fees prescribed pursuant to section 32-1527.
 24. Rules made by the department of economic security pursuant to section 46-805.
 25. Schedule of fees prescribed by section 23-908.
 26. Procedure that is established pursuant to title 23, chapter 6, article 6.
 27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.
 28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.
 29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.
 30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.
 31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.
 32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.
 33. Rules made by the Arizona department of agriculture to adopt, implement and administer 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) as provided by title 3, chapter 3, article 4.1.
 34. Calculations performed by the department of economic security associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.
- B. Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.
- C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:
1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.
 3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.
- D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.
- E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.
- F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.
- G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

41-1604.06. Earned release credit eligibility certification; classifications; appeal

A. The director shall develop and maintain an earned release credit eligibility classification system. Within such system, the director shall establish one class of earned release credit eligibility to be given effect as provided for in this section and as many other classes of noneligibility as he deems necessary or desirable. Each person committed to the state department of corrections shall be classified pursuant to the earned release credit eligibility system established by the director.

B. The director shall establish rules pursuant to chapter 6 of this title for the classification and certification of prisoners for purposes of earned release credit. An inmate who is placed in a parole eligible classification is also eligible for certification for absolute discharge from imprisonment. Upon commitment to the state department of corrections each person shall be initially placed in the earned release credit noneligible class. Reclassification and certification shall be based on factors related to a prisoner's record while in the custody of the department, including work performance, compliance with all rules of the department, progress in any appropriate education, training or treatment programs and the performance of any assignments of confidence or trust. The director shall also establish rules governing the procedures and performance standards by which prisoners, classified to noneligibility classifications, may earn eligibility classification. Prisoners may be reclassified only pursuant to the rules of the department. The director shall distribute a copy of all such rules to each person committed to the department.

C. Every prisoner shall be entitled to a hearing prior to reclassification of such prisoner to a noneligible earned release credit class. The hearing shall be before a person or persons designated by the director to hold such hearings. Reasonable notice and a written statement of the alleged violation of the rules shall be distributed to the prisoner at least five days prior to the hearing. A prisoner may request a review of a decision to reclassify the prisoner by delivering a written request to the director.

41-1604.09. Parole eligibility certification; classifications; appeal; recertification; applicability; definition

A. The director shall develop and maintain a parole eligibility classification system. Within the system, the director shall establish two classes of parole eligibility, class one and class two, to be given effect as provided for in this section, one class of parole noneligibility for dangerous psychiatric offenders and as many other classes of noneligibility as the director deems necessary or desirable. Each person committed to the state department of corrections shall be classified pursuant to the parole eligibility system established by the director.

B. The director shall establish rules pursuant to chapter 6 of this title for the classification and certification of prisoners for purposes of parole. Reclassification and certification shall be based on factors related to a prisoner's record while in the custody of the department, including work performance, compliance with all rules of the department, progress in any appropriate training or treatment programs and the performance of any assignments of confidence or trust. The director shall also establish rules governing the procedures and performance standards by which prisoners, reclassified to noneligibility classifications, may earn eligibility classification. Prisoners may be reclassified only pursuant to the rules of the department. The director shall distribute a copy of all the rules to each person committed to the department.

C. The director shall maintain two classes for parole eligibility, class one and class two. Inclusion of an inmate in class one shall be determined by adherence to the rules of the department and continual willingness to volunteer for or successful participation in a work, educational, treatment or training program established by the department, except that a person sentenced pursuant to a statute that requires that a person serve a mandatory minimum term shall not be placed in class one until one-quarter of the mandatory minimum portion of the term is served and shall not be released until the mandatory minimum portion of the term is served. Inclusion of an inmate in class two shall be determined by adherence to the rules of the department.

D. The director shall certify as eligible for parole any prisoner classified within an eligible classification five months immediately before the prisoner's earliest parole eligibility. The inmate shall be required to remain in a parole eligible classification from the date of certification until the date of release on parole. If the inmate does not remain in a parole eligible classification until the date of release on parole, the entire parole process shall be rescinded. For the purposes of this subsection, the prisoner's earliest parole eligibility occurs when the prisoner has served one-half of the sentence imposed unless the prisoner is sentenced according to any provisions of law that prohibit the release on any basis until serving not less than two-thirds of the sentence imposed by the court, the sentence imposed by the court or any other mandatory minimum term, in which case the prisoner must have served the sentence required by law.

E. Every prisoner shall be entitled to a hearing before reclassification of the prisoner to a lower class. The hearing shall be before a person or persons designated by the director to hold the hearings. Reasonable notice and a written statement of the alleged violation of the rules shall be distributed to the prisoner at least five days before the hearing. A prisoner may request a review of a decision to reclassify the prisoner by delivering a written request to the director.

F. Notwithstanding subsection D of this section, placement of a prisoner in a noneligible parole class except placement in the noneligible parole class for dangerous psychiatric offenders shall result in an increase in the period of time the prisoner must serve before reaching the prisoner's earliest parole eligibility date. The increase shall equal the number of days occurring after placement in a noneligible parole class and before the prisoner is reclassified to a parole eligible class.

G. The classification of each prisoner shall be reviewed by the director not less than once every six months. Any prisoner who was certified as eligible for parole and denied parole and remains eligible for parole pursuant to subsection D of this section shall be recertified by the director not less than one nor more than four months after the hearing at which the prisoner was denied parole, except that the board of executive clemency in denying parole may prescribe that the prisoner shall not be recertified for a period of up to one year after the hearing. The board of executive clemency may adopt rules for the recertification process and may apply specific rules for the recertification process that applies to a prisoner who is serving a sentence for any of the following:

1. Death in violation of section 13-1104 or 13-1105.
2. Serious physical injury if the person was sentenced pursuant to section 13-704.
3. A dangerous crime against children as defined in section 13-705.
4. A felony offense in violation of title 13, chapter 14 or 35.1.

H. Immediately after the adoption of the rules required pursuant to this section, the director shall forward a certified copy of the rules to the legislature. The legislature may review and, by concurrent resolution, approve, disapprove or modify the rules, except that they shall be given full force and effect pending legislative review. If no concurrent resolution is passed by the legislature with respect to the rules within one year following receipt of a certified copy of the rules, they shall be deemed to have been approved by the legislature. If the legislature disapproves the rules or a section of them, the director shall immediately discontinue the use of any procedure, action or proceeding authorized or required by the rules or section of the rules.

I. This section applies to either of the following:

1. A person who commits a felony offense before January 1, 1994.
2. A person who is sentenced to life imprisonment and who is eligible for parole pursuant to section 13-716 or 13-718.

J. Pursuant to rules adopted by the director, on commitment to the department, each prisoner shall be placed in parole class one beginning on the prisoner's sentence begin date.

K. For the purposes of this section, "dangerous psychiatric offender" means an inmate who has been placed in a psychiatric unit for psychiatric evaluation and treatment and who has been determined to present a high risk of potential violence.

E

CONSIDERATION AND DISCUSSION OF A ONE-YEAR EXTENSION REQUEST FOR A FIVE-YEAR REVIEW REPORT FROM THE ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING

Douglas A.
Ducey
Governor



Sherri L. Collins
Executive
Director

May 25, 2021

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

Re: Five Year-Review Report for A.A.C Title 9, Chapter 26- Extension Request

Dear Ms. Sorsins:

A report on the referenced review is due to be submitted to the Council by July 30, 2021. The Commission is requesting an extension of 1 year to enable it to complete a thorough review. The Commission completed its Sunset Review in September 2019 and is currently developing its Five Year Strategic Plan. The Sunset Review and Strategic Plan will inform necessary changes to rules to ensure the elimination of outdated, burdensome, or unnecessary rules. This thorough review will allow us to continue to improve the quality of life for 1.1 million Arizonans who are deaf, hard of hearing, or DeafBlind. If the extension is granted, the Commission will submit the report on or before July 30, 2022.

Respectfully,

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

Sherri L. Collins, Executive Director

602-364-0990 TTY □ 602-542-3323 V □ 480-559-9441 VP □ 800-352-8161 V/TTY □ 602-364-0581 FAX □ info@acdhh.az.gov

The mission of the Arizona Commission for the Deaf and the Hard of Hearing is to ensure, in partnership with the public and private sectors, accessibility for the deaf, deaf-blind, hard of hearing, and persons with speech difficulties to improve their quality of life.

F

CONSIDERATION AND DISCUSSION OF AN APPEAL/PETITION FROM THE GENWORTH LIFE INSURANCE COMPANY PURSUANT TO A.R.S. § 41-1033(E) AND (F)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - A.R.S. § 41-1033(E) APPEAL AND 41-1033(F) PETITION

MEETING DATE: June 1, 2021 and July 7, 2021

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

FROM: Council Staff

DATE: May 17, 2021

SUBJECT: A.R.S. § 41-1033(E) Appeal and 41-1033(F) Petition- Genworth Life Insurance Company v. Division of Insurance and Financial Institutions

Note: This Petition/Appeal was considered at the May 26, 2021 Study Session and June 1, 2021 Council Meeting. At the June 1, 2021 Council Meeting, the Council voted to table consideration of the Petition/Appeal until the June 29, 2021 Study Session and July 7, 2021 Council Meeting.

I. BACKGROUND AND PROCEDURAL POSTURE

On April 30, 2021, Council staff received an appeal/petition from Genworth Life Insurance Company (Genworth), pursuant to A.R.S. § 41-1033(E) and 41-1033(F). Genworth is appealing a decision of the Director of the Department of Insurance and Financial Institutions (DIFI) dated April 1, 2021 rejecting a petition that Genworth filed with DIFI (*See Genworth's Exhibit 2, p. 2-11*). Specifically, Genworth's petition to DIFI challenged DIFI's alleged "Fictional Premium Rule," as an agency practice that Genworth alleged constituted a rule. DIFI rejected Genworth's petition pursuant to A.R.S. § 41-1033(C).

Pursuant to A.R.S. § 41-1033(E), Genworth filed the attached appeal with the Council within the thirty (30) days it had to file an appeal. Under this statute,

[i]f an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy

statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

On Wednesday, May 12, 2021, the requisite number of Council Members requested that this appeal be placed on a meeting agenda. Therefore, on May 14, 2021, Council staff notified both Genworth and DIFI that this appeal would be on the agenda of the May 26, 2021 Study Session.

Additionally, in the filing before the Council, Genworth is petitioning the Council pursuant to A.R.S. § 41-1033(F) to request a review of DIFI's rule R20-6-1013(C) (Loss Ratio) based on Genworth's belief that it does not meet the requirements prescribed in A.R.S. § 41-1030. Specifically, Genworth alleges R20-6-1013(C) exceeds the scope of DIFI's rulemaking authority and was not promulgated in substantial compliance with the Administrative Procedures Act (APA).

II. STAFF RECOMMENDATION

At this juncture, the issue before the Council is whether Genworth has provided sufficient information in its appeal/petition that DIFI's conduct constitutes a "rule" that was not adopted pursuant to the APA and whether R20-6-1013(C) meets the requirements prescribed in section 41-1030 to warrant further consideration and a decision by the Council. Specifically, pursuant to A.R.S. § 41-1033(H), "if the [C]ouncil **receives information that indicates an existing agency practice or substantive policy statement *may* constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030...**and at least four [C]ouncil members request of the chairperson that the matter be heard in a public meeting...[w]ithin ninety days after receipt of the fourth [C]ouncil member's request, the [C]ouncil shall determine whether the agency practice or substantive policy statement constitutes a rule [and/or] whether the final rule meets the requirements prescribed in section 41-1030." (Emphasis added).

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard. To assist in making their assessments, Council staff encourages the Council to seek clarification and insights from the appellant/petitioner and the agency, as necessary.



GRRC - ADOA <grrc@azdoa.gov>

Fwd: Rule 1013 C

Simon Larscheidt <simon.larscheidt@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Tue, Jun 22, 2021 at 12:34 PM

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

From: Barry Fisk <barryafisk@gmail.com>
Date: Tuesday, June 15, 2021 at 5:53:36 AM UTC-7
Subject: Fwd: Rule 1013 C
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Barry A. Fisk
Retired:
Barryafisk@gmail.com
Cell 623 258-8525

Begin forwarded message:

From: Talyce Fisk <tfisk.30@gmail.com>
Date: June 15, 2021 at 5:48:45 AM MST
To: Barry Fisk <barryafisk@gmail.com>
Subject: Fwd: Rule 1013 C

Sent from my iPad

Begin forwarded message:

From: Talyce Fisk <tfisk.30@gmail.com>
Date: June 15, 2021 at 5:42:51 AM MST
To: www.grrccomments@azdoa.gov
Subject: Rule 1013 C

To Whom It May Concern,

My husband and I are lifelong seniors of Arizona and love this beautiful state. In 2005 we were trying to be responsible in preparing for our future "aging" process by buying Long Term Care Insurance. Being good stewards with our finances we made these purchases early on so we could afford the premiums. We have been paying our premiums diligently for sixteen years with the comfort of knowing that as we advance in years we would have the care we need that we have planned for wisely. We have adult children that we do not want to burden with our care as well as we do not want to be a drain on the state to provide this care. Please know that we have budgeted to accommodate these premiums by not enjoying any vacations, buying new cars or even enjoying hobbies that we would have loved to pursue! Now, after sixteen years of sacrificing to relieve any future burdens left to our children or the state, Rule 1013 C is in dire jeopardy of being overturned!! This is a tragedy and APPALLING if this rule should be allowed to be overturned! I know that we speak on behalf of ALL of the seniors that

have tried to do the right thing in securing their futures...WE IMPLORE YOU PLEASE to not give any credence to the actions that are being brought before you to eradicate this ruling!!!!!!! We seniors have struggled to pay thousands of dollars only to have it taken away...one last thought, EACH OF YOU THAT WILL BE INVOLVED IN THIS DECISION will one day face the same aging decline...put yourselves in our shoes please and think of what YOU will do?

My husband and I welcome any contact and further discussion as this is VERY important to us! Our contact info is listed below.

Thank you for your time and very careful consideration,
Barry and Talyce Fisk
[14249 W. Indianola Ave.](#)
[Goodyear AZ 85395](#)
Cell# [623.302.4888](#)

Sent from my iPad



GRRC - ADOA <grrc@azdoa.gov>

Fwd: I oppose repeal of RULE 1013c

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Tue, Jun 15, 2021 at 3:01 PM

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

From: Elizabeth Minno <elizabethminno@gmail.com>
Date: Tuesday, June 15, 2021 at 9:14:06 AM UTC-7
Subject: I oppose repeal of RULE 1013c
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I need to express my opposition to allowing GRRC to repeal RULE 1013C. By doing so insurance companies will increase premiums that are unsustainable to elderly and others. The insured will no longer be able to afford the long term policies they have counted on to remain independent of government and/or family support.

I SUPPORT Rule 1013C. It is necessary protection for Long Term Care Policy holders who have taken the initiative to protect themselves against the costs of care at the end of life.

Do not let GRRC toss out this protection that has been granted to Long Term Care Policyholder in AZ by SB 1441 and Rule 1013C. I am appalled removing the protection against outrageous premium increases is even under consideration.

Elizabeth Minno

[9832 N Calle Loma Linda](#)

[Oro Valley, AZ 85737](#)

[520-237-9229](#)

Sent from [Mail](#) for Windows 10



GRRC - ADOA <grrc@azdoa.gov>

Fwd:

Krishna Jhaveri <krishna.jhaveri@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Tue, Jun 22, 2021 at 11:53 AM

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

From: gonetothewoods@rocketmail.com <gonetothewoods@rocketmail.com>
Date: Tuesday, June 15, 2021 at 5:49:35 PM UTC-7
Subject:
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Dear Council Members,

In 2016, we senior citizens put in place SB 1441, Rule 1013C. This helped keep costs for long term care affordable. We don't want to be a burden to our family and friends, but with more premium increases on the cost, there will be families that will be forced to drop carrying this policy. Surviving on Social Security will make it impossible to afford an increase. We're asking you to keep Rule 1013C in place and protect the policyholders

Thank you for your time.
God Bless You.

Clovis and Lou Hungate



GRRC - ADOA <grrc@azdoa.gov>

Fwd: 1013C DO NOT REMOVE

Krishna Jhaveri <krishna.jhaveri@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Tue, Jun 22, 2021 at 11:54 AM

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

From: Leonora Ketyer <drleonoraketyer@gmail.com>
Date: Wednesday, June 16, 2021 at 8:41:29 AM UTC-7
Subject: 1013C DO NOT REMOVE
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

Since 2001 when I enrolled in a long term insurance coverage the monthly fees rose each year until a significant portion of my social security monthly living expenses is impacted.

Each month I hav to decide food, rent or LTC....please I live alone and if the protection under 1013C is removed YOU a will have to take care of me for,sure...each amd every one of YOU!

Thank you.

Leonora

Sent from my iPad



GRRC - ADOA <grrc@azdoa.gov>

Fwd: Do NOT repeal Rule 1013C!

Krishna Jhaveri <krishna.jhaveri@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Tue, Jun 22, 2021 at 11:54 AM

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

From: Tom Hegna <tom@tomhegna.com>
Date: Wednesday, June 16, 2021 at 3:40:57 PM UTC-7
Subject: Do NOT repeal Rule 1013C!
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I am writing to express my opposition to the GRRC repealing rule 1013C.

I understand that some insurance companies want to increase their Long Term Care Insurance premiums. These are policies that Arizonans bought to protect their families from the financial devastation caused by Long Term Care expenses.

These insurance companies set their premiums. Innocent policyholders should NOT have to pay for the mistakes of the insurance companies.

The GRRC should NOT toss out the protection that has been granted to Long Term Care Policyholders in AZ by SB 1441 and Rule 1013C.

Also remember that these Long Term Care policies don't just protect their families, they also protect THE STATE OF ARIZONA! When people drop their policies they go on Medicaid. This causes huge financial problems for the State of Arizona.

So please don't allow these insurance companies to pass their mistakes off on the people of Arizona!

Tom Hegna
(602) 549-6653
Sent from my iPhone



GRRC - ADOA <grrc@azdoa.gov>

Fwd: LTC rates

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Tue, Jun 22, 2021 at 11:54 AM

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

From: ts4judy@aol.com <ts4judy@aol.com>
Date: Thursday, June 17, 2021 at 8:56:18 AM UTC-7
Subject: LTC rates
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I am voicing my support for Rule 1013C. I am a senior with a long term care policy that I have paid on over 10 years. I chose to have this protection so that my family and/or the state of AZ would not have to provide care for me if needed. I am appalled that the protection provide by Rule 1013C would be removed and I would be subjected to large rate increases.

Sincerely,
Judy Ordonez
[480-963-4903](tel:480-963-4903)



GRRC - ADOA <grrc@azdoa.gov>

Fwd: Possible LT Care Increases

1 message

Krishna Jhaveri <krishna.jhaveri@azdoa.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Tue, Jun 22, 2021 at 11:55 AM

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

From: e <garlinantr@aol.com>
Date: Friday, June 18, 2021 at 6:49:09 AM UTC-7
Subject: Possible LT Care Increases
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I support the measure that was adopted to stop the raising of rates on LT Care Policies that was enacted a few yrs ago...Rule 1013C. I am a Senior aged 69 with diabetes, useful vision although damaged in just one eye...the other eye has only peripheral vision. I had the courage and foresight to recognized while I was healthier that LT Care was necessary to protect my family...as well as the State of AZ from horrendous costs for my care....my mother and my father both had to spend down to meet requirements to get on Arizonas LT Care for the poor...with AZ picking up all costs...I have paid..now up to almost I believe 6000 dollars a yr to pay for myself and wife...and I have been paying since I was in my 50s...this is a slap in the face to me for preparation of what could happen when I dealt with Mom and Dad...so I acted when I saw what could and did happen to both of them. I have enough stress in my life and am fed up with politicians who appear to not care about my personal interests....I applaud my agent, Sue Richie who has been fighting for us...You are about to punish me to the point where I have to reduce my coverage or drop it...and waste the 10s of thousands of dollars I have spent already....do justice for your elderly LT Care residents of AZ who acted with care and courage to purchase LT Care Insurance early to save our families and the State of AZ 10s of thousands of dollars. Do what is right for me and act to protect my family and me. Respectfully, Gary Basilo



June 28th, 2021

TO the Governor's Regulatory Review Council (GRRC):

RE: Consideration against Genworth Petition to repeal 1013(C).

On behalf of the Arizona In Home Care Association (AZNHA), Arizona's largest association representing best practices in quality home care, we strongly urge GRRC to vote against consideration of the petition put forth by Genworth to repeal 1013(C). AZNHA is a 501(c)6 non-profit that advocates for consumer protections and best business practices and we cannot in good faith allow this petition to move forward.

It is AZNHA's understanding that by repealing 1013(C), insurance companies like Genworth will have unlimited capacity to unjustly raise premiums on customers who have been paying on their policies for years. It is AZNHA's understanding that Genworth is asking this due to gross miscalculations on the costs of the claims on these policies. Customers of Genworth should not be liable for Genworth's mistakes and should not bear Genworth's financial burden of claims on these policies. Genworth wrote these policies and customers bought into these policies when they were younger with the impression and promise that they would be able to obtain care through these policies later in life. Genworth and other insurance companies need to uphold their end of the bargain with their clients.

It is also AZNHA's understanding that Genworth is petitioning that the unwritten rule, or "fictional premium" is inconsistent with the current written rules governing the rating of long-term care insurance, but not petitioning a repeal of the regulation or the rule's protections to consumers. If this is the case, then why did Genworth not mention any inconsistencies in the past when they had countless opportunities to do so. If this is the case, then what protections have been proposed to correct the inconsistencies but maintain consumer protection? Genworth claims that they are not advocating a repeal of the regulation, but by not following this rule under any pretense, will remove any consumer protections from unjust increases to premiums.

AZNHA represents over 100 home care agencies across the state, and provides service for tens of thousands of seniors across the state. Our clients utilize these policies to obtain care. They've done the responsible thing by paying premiums for decades to protect themselves and their loved ones in their time of need. Unjustly raising premiums will force many of these responsible consumers to drop their policies due to affordability. Less people will get care, more people will end up in medical emergencies, and those who did the right thing will lose everything they invested in to protect themselves.

On behalf of AZNHA, please do not vote to consider Genworth's petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach Shaw".

Zach Shaw
President, Arizona In-Home Care Association

Arizona In-Home Care Association
PO Box 8042, Tempe, AZ 85281
602-283-3503

www.aznha.org

info@aznha.org

DAVID LIVINGSTON
ARIZONA STATE SENATE
1700 WEST WASHINGTON, SUITE S
PHOENIX, ARIZONA 85007-2844
CAPITOL PHONE: (602) 926-4178
CAPITOL FAX: (602) 417-3154
TOLL FREE: 1-800-352-8404
dlivingston@azleg.gov



COMMITTEES:
FINANCE, CHAIRMAN
APPROPRIATIONS,
MEMBER
COMMERCE, MEMBER

DISTRICT 22

Arizona State Senate

June 23, 2021

VIA ELECTRONIC MAIL

Ms. Nicole Sornsin, Chairman
Governor's Regulatory Review Council
100 North 15th Ave # 305
Phoenix, AZ 85007

Dear Ms. Sornsin:

I am writing in support of the Genworth Appeal of the agency practice of using the unwritten rule, commonly known as the "Fictional Premium Rule" or the "If Known" approach, to evaluate requests for increases of Long-Term Care Insurer (LTCI) rates. In SB 1441, the Legislature mandated that the Department of Insurance and Financial Institutions (DIFI or the Department) adopt the NAIC Model Regulation, including the 2014 Amendments, to the Model Regulation. Importantly, R20-6-1013, which is the rule that DIFI is relying on, already conformed to the NAIC Model Regulation. As such, no changes to that rule were either intended or authorized. Nonetheless, it appears that DIFI has expanded the scope of that mandate to impose regulatory requirements that exceed the 2014 NAIC Model Regulation.

I currently serve as the Chairman of the Senate Finance Committee, which is the standing committee responsible for oversight of DIFI. During my legislative tenure, I have authored over 40 different insurance regulatory and policy bills, so I am very familiar with the relationship between the Legislature and DIFI. Prior to my public service, I was a successful Ameriprise agent for more than 20 years and have substantial experience with retirement products including LTCI. In 2016, I served as Majority Whip in the House and Vice Chair of the House Insurance Committee. Along with current Senate President Karen Fann and Senator Nancy Barto, we worked extensively on SB 1441 (Premiums; Rates; Long-term Care Insurance) which directed the Department of Insurance to conform the Arizona regulations to the NAIC Model Regulations of 2014.

Prior to the final legislation, the Legislature looked at several regulatory options to balance insurers' requirement for adequate premiums with consumers' need to control costs. After considerable discussion, SB 1441 was drafted to direct the Department to make updates that were needed to conform Arizona's regulations to the 2014 version of NAIC Model Long Term Care Regulations. This approach was adopted purposely so that Arizona could continue to participate in a national strategy that did not pit states against each other by attempting to shift one state's long-term care costs to consumers in other states.

The NAIC Model Regulations provide a balanced and uniform approach to regulating long-term care insurance rates. The mandate of the Legislature to the Department, therefore, in providing exempt rulemaking authority, was to simply make any needed changes to conform Arizona's regulations to the Model Regulation as amended in 2014. The changes that the Legislature intended were the additional protections incorporated in the 2014 Model Regulations applicable to more recently issued long-term care insurance policies. These changes, which add substantial protections for consumers, are found in the now-current versions of R20-6-1014 and R20-6-1015. The changes also included the addition of R20-6-1025 which allows consumers to reduce coverage and lower premiums, and revisions to R20-6-1019 which grants consumers certain rights in the event of rate increases.

However, where Arizona's regulations already conformed to the NAIC Model Regulations, no changes to those regulations were intended or authorized. Prior to S.B. 1441, R20-6-1013 already conformed to the NAIC Model Regulation and the 2014 Amendments to the NAIC Model Regulation made no changes to that portion of the Model Regulation. Accordingly, the Department was not authorized to add additional substantive requirements to section 1013. The addition of 1013(C), and the adoption of the Fictional Premium Rule, thus was inconsistent with the Legislature's intent and exceeds the scope of the limited authority for exempt rule making granted to DIFI under SB 1441.

It is important to understand that R20-6-1013(B), which DIFI was not authorized to change since it already complied with the NAIC Model Regulation, enables DIFI to evaluate rate increases based on a lengthy list of factors. Those factors includes:

1. Statistical credibility of incurred claims experience and earned premium;
2. The period for which rates are computed to provide coverage;
3. Experience and projected trends;
4. Concentration of experience within early policy duration;
5. Expected claims fluctuations;
6. Experience refunds, adjustments and dividends;
7. Renewability features;
8. All appropriate expense factors;
9. Interest;
10. Experimental nature of the coverage;
11. Policy reserves;
12. Mix of business by risk classification; and
13. Product features such long-elimination periods; high deductibles and high maximum limits.

These factors do not include “If-Known” premiums or “Fictional” premiums.

I point out this list of review factors to highlight that R20 6 1013, which the Legislature did not intend to change, provides a robust tool for regulators to review LTCI filings to ensure that they are appropriate. It is therefore concerning that DIFI has purposely expanded its authority beyond the scope of SB 1441 and that DIFI is using an unwritten rule not authorized by the Legislature.

In adopting the “If Known” or “Fictional Premium Rule,” DIFI has contravened the legislative purpose of SB 1441 – to conform Arizona’s regulations to the 2014 NAIC Model Regulations – and, unfortunately, has made Arizona an outlier nationally. If it was the Legislature’s desire to use that rule, we would have provided DIFI with such authority. We did not because it does not make sense to base rate adjustments on rates that were never charged or will never be charged. Indeed, this is exactly why the NAIC rejected the “If Known” or “Fictional Premium” approach. Further, the national approach appears to be working as 48 states have adopted the national model.

The regulated community has the right to be evaluated on the basis of properly authorized and promulgated regulations. The review can and should be robust, but within the regulatory framework. An investigation by GRRC will help to determine whether DIFI is following the Legislature’s authorizing statutes or applying unwritten rules inappropriately.

Please contact me if you have any questions about my opinions on the challenge and related legislation.

Sincerely,

A handwritten signature in cursive script that reads "David Livingston".

Senator David Livingston,
Chairman Senate Finance Committee

6/25/2021

Governor's Regulatory Review Council
100 North 15th Ave. #305
Phoenix, AZ 85007

Dear Council Members,

Thank you for the opportunity to comment on the Genworth petition before you. I strongly oppose the request to repeal rule subsection 1013C for a number of reasons - including:

1. **The rule is working.** Before the bill I sponsored undergirding rule subsection 1013C was passed in 2016 (SB 1441), long term care policyholders in Arizona were subject to outrageous (i.e. 70%, 88%, 123%) premium increases *year after year* for which many were ill-prepared - and unable to afford. *After* SB1441 and its subsequent rules were in place, the madness stopped for most of them. Individuals with LTC policies written before May 10, 2005 finally could rest assured they would be protected. Exorbitant premium hikes requested would have to be justified meet standards – not automatic approval. And they were. Premium request approvals have been commensurate with expectations and with those in other states. The Dept. followed the statute as well as the Legislature's intent by promulgating rules accordingly.
2. **The rule in question was subject to a public process and should not be subject to repeal through GCCR.** One of the strongest arguments not to move forward is the fact that *insurers did not question or raise concerns that the proposed rule was authorized by statute during the extensive rulemaking process* - even though they were present and involved in the process. If insurers have current concerns, there are legitimate avenues to change both rules and laws - through the Legislative process.
3. **This rule, if repealed, would have devastating consequences.** The timing could not be worse for at-risk policyholders who would be affected. These clients are generally older and the most likely to need/utilize their benefit thus many would be without other affordable options. Taxpayers would also be asked to bear the impact of the policies at risk of dissolution as many policyholders will be forced onto ALTCs – a program that is already stressed to the max.
4. **The consequences of this rule repeal would not only be devastating, but almost immediate.** The DIFI would have no choice but to return to pre-SB1441 policies when there was no legislative guidance to thwart the increases that will certainly be requested as soon as the protective rule might be repealed. Furthermore, the Legislature would have no opportunity to address the fallout through the legislative process.
5. **Insurers seem intent on returning to the status quo - not solving the problem.** Taking what I consider a drastic step backwards - rule 1013C repeal - rather than coming to the Legislature. For the record, perhaps other legislators were, but neither I nor my

staff had been contacted by Genworth or other LTC insurance lobbyists this session, which is why this comes as such a troubling surprise to me and the constituents I represent.

Finally, Genworth holdings appear strong according to its recent [IPO announcement](#) (reported May 5, 2021) in which their CEO stated, “We have remained nimble and taken decisive actions to ensure Genworth is well positioned to create value for our stakeholders into the future,” said Genworth president and CEO Tom McInerney in a statement regarding its first quarter results. “Given our current holding company cash position, the actions we’ve already taken with our strategic plan, capital raising efforts and our expected cash flow profile, I am confident in Genworth’s ability to meet the debt obligations over the next several years.”

I realize that determining the petitioner’s financial health is not the question before the GRRC nor are contingencies. I mention it because the threat of insolvency is an underlying assumption in any discussion of high premium increase requests, denials, etc. and the timing of bringing the petition forth. That is not our concern here, however. The law and insurers’ ethical obligation to the policyholders are the primary concerns in my opinion. These deserve the ultimate consideration.

To that end, I urge the Council not to move this petition forward.

Thank you again for your consideration and for your dedicated service.

Sincerely,



Senator Nancy Barto

Arizona State Senate, District 15
Chairwoman, Health and Human Services
602-926-5766 phone
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