

**D-1**

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 1, Articles 1-3

**Amend:** R9-1-101, R9-1-102, R9-1-103, R9-1-201, R9-1-202, R9-1-203, R9-1-301, R9-1-302,  
R9-1-303



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 4, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (R20-0602)**  
Title 9, Chapter 1, Article 1, Rules of Practice and Procedure, Article 2, Public Participation in Rulemaking, and Article 3, Disclosure of Medical Records, Payment Records, and Public Health Records

**Amend:** R9-1-101, R9-1-102, R9-1-103, R9-1-201, R9-1-202, R9-1-203,  
R9-1-301, R9-1-302, R9-1-303

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### Summary:

This Notice of Final Expedited Rulemaking from the Department of Health Services (Department) relates to rules in Title 9, Chapter 1, Articles 1, 2, and 3. The Department seeks to amend these rules consistent with its recent Five Year Review Report (5YRR) for these rules, which the Council approved in September 2019. In that 5YRR, the Department stated it would amend the rules to update outdated definitions and statutory references; revise outdated language to make the rules more clear and effective; and update the language of the rules to comply with Laws 2018, Ch. 337, which made changes to A.R.S. § 41-1033. The Department stated it would add language to the rules related to records that are confidential under A.R.S. § 36-2810 (Confidentiality). This expedited rulemaking seeks to amend the rules consistent with the proposed course of action in the Department's 5YRR.

The Department received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on November 19, 2019.

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

Yes. The Department states that in the 5YRR for these rules, which the Council approved in September 2019, the Department proposed to amend the rules in this Chapter to update outdated statutory definitions and references; revise outdated language; update language to comply with Laws 2018, Ch. 337, which made changes to A.R.S. § 41-1033; and include language related to records which are confidential under A.R.S. § 36-2810. The Department states that the rule amendments meet the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(7) because they implement a course of action proposed in a 5YRR. Upon review, Council staff agrees with the Department that this rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7).

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

Yes. The Department cites both general and specific statutory authority for these rules.

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

Not applicable.

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

The Department did not receive any comments in conducting this expedited rulemaking.

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

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

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

Not applicable. There is no corresponding federal law.

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

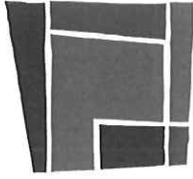
These rules do not require a permit or license.

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

The Department states that it did not review or rely on any study in conducting this expedited rulemaking.

**9. Conclusion**

In this expedited rulemaking, the Department seeks to amend the rules consistent with a proposed course of action in the most recent 5YRR for these rules, which the Council approved in September 2019. The amended rules would be more clear, concise, understandable, and effective. If approved, the rulemaking would be effective immediately upon the Department filing its Certificate of Approval with the Secretary of State's office. Council staff recommends approval of this rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

April 16, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

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

RE: Department of Health Services, 9 A.A.C. 1, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: March 26, 2020
  2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council on September 9, 2019, pursuant to section A.R.S. § 41-1056. Changes to the rules include updating outdated definitions and statutory references and making the rules consistent with statutes. Thus, the Department believes the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(3), (6), and (7).
  3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 1 relates to a five-year-review report approved by the Council on September 9, 2019.
- The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.
4. A list of all items enclosed:
    - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
    - b. Statutory authority

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie Elzenga', with a stylized flourish extending to the right.

Stephanie Elzenga  
Director's Designee

SE:rms

Enclosures

**NOTICE OF FINAL EXPEDITED RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES**  
**ADMINISTRATION**  
**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE**  
**ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING**  
**ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC**  
**HEALTH RECORDS**

**PREAMBLE**

- | <b><u>1.</u></b> | <b><u>Article, Part, or Section Affected (as applicable)</u></b>   | <b><u>Rulemaking Action</u></b> |
|------------------|--|---------------------------------|
|                  | R9-1-101   | Amend                           |
|                  | R9-1-102   | Amend                           |
|                  | R9-1-103   | Amend                           |
|                  | R9-1-201   | Amend                           |
|                  | R9-1-202   | Amend                           |
|                  | R9-1-203   | Amend                           |
|                  | R9-1-301   | Amend                           |
|                  | R9-1-302   | Amend                           |
|                  | R9-1-303   | Amend                           |
| <b><u>2.</u></b> | <b><u>Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u></b>                 |                                 |
|                  | Authorizing statutes: A.R.S. §§ 36-104(3), 36-136(A)(1), and 36-136(G)   |                                 |
|                  | Implementing statutes: A.R.S. §§ 36-104(9), 36-105, 36-107, 36-136(H)(11), 36-351, 41-1002(C), 41-1003, 41-1029, 41-1033, 41-1092.08, and 41-1092.09                         |                                 |
| <b><u>3.</u></b> | <b><u>The effective date of the rules:</u></b>   |                                 |
|                  | The rules are effective on the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.  |                                 |
| <b><u>4.</u></b> | <b><u>Citations to all related notices published in the <i>Register</i> as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:</u></b> |                                 |
|                  | Notice of Rulemaking Docket Opening: 26 A.A.R. 206, January 31, 2020   |                                 |
|                  | Notice of Proposed Expedited Rulemaking: 26 A.A.R. 501, March 20, 2020   |                                 |
| <b><u>5.</u></b> | <b><u>The agency’s contact person who can answer questions about the expedited rulemaking:</u></b>   |                                 |

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

Telephone: (602) 542-1020  
Fax: (602) 364-1150  
E-mail: Stephanie.Elzenga@azdhs.gov  
or

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

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

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

The five-year-review report for 9 A.A.C. 1, Articles 1 through 3 was approved by the Governor's Regulatory Review Council in September 2019. In the report, the Department stated a plan to amend the rules to update outdated definitions and statutory references, and revise outdated language that will improve the clarity and effectiveness of the rules; update language to comply with Laws 2018, Ch. 337, which made revisions to Arizona Revised Statutes (A.R.S.) § 41-1033; and include language related to records that are confidential under A.R.S. § 36-2810. After obtaining an exception from the rulemaking moratorium, established by Executive Order 2019, the Department is amending the rules as specified in the report. The changes identified do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person. The new rules meet the criteria for expedited rulemaking and implement a course of action proposed in the five-year-review report, as prescribed in A.R.S. § 41-1027(A)(7). The Department believes amending these rules will eliminate confusion and reduce regulatory burden to affected persons.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public**

**may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

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

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

This final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

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

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

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

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

The Department did not receive public or stakeholder comments about the expedited rulemaking.

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

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

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

The rules do not require a permit.

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

There are no federal rules applicable to the subject of the rule.

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

No such analysis was submitted.

**13. Incorporations by reference and their location in the rules:**

None

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

The rule was not previously made as an emergency rule.

**15. The full text of the rule follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES**

**ADMINISTRATION**

**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE**

**ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING**

**ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS**

**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE**

Section

- R9-1-101. Definitions
- R9-1-102. ~~Objection~~ Response to a recommended decision
- R9-1-103. Rehearing or review of a final administrative decision

**ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING**

Section

- R9-1-201. Definitions
- R9-1-202. Rulemaking record
- R9-1-203. Petition for department rulemaking and petition for review of a department practice or substantive policy statement

**ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS**

Section

- R9-1-301. Definitions
- R9-1-302. Medical records or payment records disclosure
- R9-1-303. Public health records disclosure

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES ADMINISTRATION**  
**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE**

**R9-1-101. Definitions**

**A.** ~~In this Chapter,~~ in addition to the definitions in A.R.S. §§ 41-1001 and 41-1092, the following definitions apply in this Chapter, unless otherwise specified:

1. ~~“Day” means a calendar day, and excludes the:~~
  - a. ~~Day of the act or event from which a designated period of time begins to run; and~~
  - b. ~~Last day of the period if a Saturday, Sunday, or official state holiday.~~
1. “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.
2. “Department” means the Arizona Department of Health Services.
3. “Director” means the Director of the Arizona Department of Health Services ~~or an individual designated by the Director.~~
4. ~~“Rule” has the same meaning as A.R.S. § 41-1001(17).~~

**B.** ~~In this Article, unless otherwise specified:~~

1. ~~“Administrative law judge” has the same meaning as in A.R.S. § 41-1092.~~
2. ~~“Appealable agency action” has the same meaning as in A.R.S. § 41-1092.~~
3. ~~“Contested case” has the same meaning as in A.R.S. § 41-1001.~~
4. ~~“Final administrative decision” has the same meaning as in A.R.S. § 41-1092.~~
5. ~~“Party” has the same meaning as in A.R.S. § 41-1001.~~
- 6.4. “Recommended decision” means the written ruling made by an administrative law judge regarding a contested case or appealable agency action within 20 days after a hearing under ~~A.R.S. § 41-1092.07~~ A.R.S. § 41-1092.08.

**R9-1-102. ~~Objection~~ Response to a Recommended Decision**

- A.** ~~Upon receipt of a copy of a recommended decision for a contested case or an appealable agency action, the~~ The Director may mail a copy of the a recommended decision to each party.
- B.** A party has ten calendar days from the date the Director mails the recommended decision to submit a ~~memorandum of objections~~ response that states each reason why the Director should accept, reject, or modify the recommended decision ~~is in error~~, with information supporting the

reason.

- C. The Director may consider ~~the memorandum of objections~~ a response in subsection (B) in determining whether to accept, reject, or modify the recommended decision.

**R9-1-103. Rehearing or Review of a Final Administrative Decision**

- A. A party who is aggrieved by a final administrative decision may file with the Director, not later than 30 calendar days after service of the final administrative decision, a written motion for rehearing or review of the final administrative decision specifying the grounds for rehearing or review.
- B. A party filing a motion for rehearing or review under this Section may amend the motion at any time before it is ruled upon by the Director.
- C. Any other party may file a response to the motion for rehearing or review in subsection (A) within 15 calendar days after the date the motion for rehearing or review is filed with the Director.
- D. The ~~director~~ Director may require that the parties file supplemental memoranda explaining the issues raised in ~~the~~ a motion or response in subsection (A) or (C) and may permit oral argument.
- ~~C.E.~~ The Director may grant a rehearing or review of the final administrative decision for any of the following reasons materially affecting the requesting party's rights:
1. Irregularity in the proceedings of the hearings or an abuse of discretion, that deprived the party of a fair hearing,
  2. Misconduct by the administrative law judge or the prevailing party,
  3. Accident or surprise that could not have been prevented by ordinary prudence,
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing,
  5. Excessive or insufficient penalties,
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing, or
  7. That the decision is not supported by the evidence or is contrary to law.
- ~~D.F.~~ The Director shall rule on the motion for rehearing or review within 15 calendar days after ~~the~~ a response to the motion is filed. If no response to the motion for rehearing or review is filed, the Director shall rule on the motion for rehearing or review within five calendar days after the expiration of the response period in subsection (C).
- ~~E.G.~~ An order issued by the Director granting a rehearing or review shall specify the grounds for the rehearing or review.

## ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING

### R9-1-201. Definitions

In addition to the definitions in ~~R9-1-101(A)~~ R9-1-101, the following definitions apply in this Article, unless otherwise specified:

1. “Amendment” means a change to a rule, including added or deleted text.
2. “Arizona Administrative Code” means the publication described in A.R.S. § 41-1012.
3. “Citation” means the number that identifies a rule.
4. ~~“Person” means the same as in A.R.S. § 41-1001(13).~~
5. ~~“Rulemaking” means the same as in A.A.C. R1-1-101.~~
- 6.4. “Rulemaking record” means a file maintained by the Department as specified in A.R.S. § 41-1029.
7. ~~“Substantive policy statement means the same as in A.R.S. § 41-1001(20).~~
- 8.5. “Text” means a letter, number, symbol, table, or punctuation in a rule.

### R9-1-202. Rulemaking Record

Except on a state holiday, an individual may review a rulemaking record at the Office of ~~the Director~~ Administrative Counsel and Rules, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

### R9-1-203. Petition for Department Rulemaking and Petition for Review of a Department Practice or Substantive Policy Statement

- A. A petition to the Department for rulemaking under A.R.S. § 41-1033 shall include:
1. The name and address of the individual who submits the petition;
  2. An identification of the rulemaking, including:
    - a. A statement of the rulemaking sought,
    - b. The Arizona Administrative Code citation of each existing rule included in the petition, and
    - c. A description of each new rule included in the petition;
  3. The specific text of each new rule or amendment;
  4. The reasons for requesting the rulemaking, supported by:
    - a. Statistical data;
    - b. If the statistical data refers to exhibits, the exhibits;
    - c. An identification of the persons who would be affected by the rulemaking and the type of effect; and
    - d. Other information supporting the rulemaking;
  5. The signature of the individual who submits the petition;

6. The date the petition is signed; and
  7. A copy of each existing rule included in the petition.
- B.** A petition to the Department under A.R.S. § 41-1033 for review of a Department practice or substantive policy statement that allegedly constitutes a rule shall include:
1. The name and address of the individual who submits the petition,
  2. ~~The reasons why the Department's~~ An identification of a Department practice or substantive policy statement that allegedly constitutes a rule,
  3. The signature of the individual who submits the petition,
  4. The date the petition is signed, and
  5. A copy of the Department's substantive policy statement or a description of the Department's practice.
- C.** ~~According to A.R.S. § 41-1033(A), the~~ The Department shall notify an individual who submits a ~~subsection (A) or subsection (B) petition~~ according to A.R.S. § 41-1033 of the Department's decision in writing within 60 calendar days after receipt of the petition.
- D.** If the Department denies a ~~subsection (A) or subsection (B) petition~~ submitted according to A.R.S. § 41-1033, the individual who submitted the petition may proceed according to ~~either A.R.S. § 41-1033(B) or A.R.S. § 41-1034 or according to both A.R.S. § 41-1033(B) and A.R.S. § 41-1034~~ A.R.S. §§ 41-1033 or 41-1034.

**ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS**

**R9-1-301. Definitions**

In addition to the definitions in ~~R9-1-101(A)~~ R9-1-101, the following definitions apply in this Article, unless otherwise specified:

1. “Behavioral health services” means the ~~assessment, diagnosis, or treatment of an individual’s mental, emotional, psychiatric, psychological, psychosocial, or substance-abuse issues~~ same as in A.R.S. § 36-401.
2. “Business day” means the same as in A.R.S. § 10-140.
3. “Commercial purpose” means the same as in ~~A.R.S. § 39-121.03(D)~~ A.R.S. § 39-121.03.
4. “Consent” means permission by an individual or by the individual’s parent, legal guardian, or other health care decision maker to have medical services provided to the individual.
- ~~5.~~ “Correctional facility” means the same as in A.R.S. § 13-2501(2).
- ~~6.~~5. “Court of competent jurisdiction” means a court with the authority to enter an order.
- ~~7.~~6. “De-identified” means a public health record from which the information listed in 45 CFR 164.514(b)(2)(i) for an individual and the individual’s relatives, employers, or household members has been removed.
8. ~~“Diagnosis” means an identification of a disease or an injury by an individual authorized by law to make the identification.~~
- ~~9.~~7. “Disclose” means to release, transfer, provide access to, or divulge information in any other manner.
- ~~10.~~8. “Disclosure” means the release, transfer, provision of access to, or divulging of information in any other manner by the person holding the information.
- ~~11.~~9. “Disease” means ~~a condition or disorder that causes the human body to deviate from its normal or healthy state~~ the same as in R9-6-101.
- ~~12.~~10. “Documentation” means written supportive evidence.
- ~~13.~~11. “Emancipated minor” means an individual less than age 18 who:
  - a. Is determined to be independent of parents or legal guardians under A.R.S. Title 12, Chapter 15, Article 1, ~~as added by Laws 2005, Chapter 137, § 3, effective August 12, 2005;~~
  - b. Meets the requirements for recognition as an emancipated minor in A.R.S. § 12-2455, ~~as added by Laws 2005, Chapter 137, § 3, effective August 12, 2005;~~
  - c. Has the ability to make a contract under A.R.S. § 44-131 or to consent to medical

services under A.R.S. § 44-132; or

d. Is married or is a U.S. armed forces enlisted member.

~~14-12.~~ “Employee” means an individual who works for the Department for compensation.

~~15-13.~~ “Enlisted member” means the same as in ~~32 U.S.C. 101(9)~~ 32 U.S.C. 101.

~~16-14.~~ “Epidemic” means that a disease ~~that~~ affects a disproportionately large number of individuals in a population, community, or region at the same time.

~~17-15.~~ “Estate” means the same as in ~~A.R.S. § 14-1201(16)~~ A.R.S. § 14-1201.

~~18.~~ “Financial institution” means a bank, a savings and loan association, a credit union, or a consumer lender.

~~19-16.~~ “Halfway house” means a residential facility setting that temporarily provides shelter, food, and other services to an individual after the individual completes a confinement in a correctional facility, as defined in A.R.S. § 13-2501, or a stay in a health care institution, as defined in A.R.S. § 36-401.

~~20-17.~~ “Health care decision maker” means the same as in ~~A.R.S. § 12-2291(3)~~ A.R.S. § 12-2291.

~~21.~~ “Health care institution” means the same as in ~~A.R.S. § 36-401(23).~~

~~22.~~ “Health care system” means the facilities, personnel, and financial resources in place in a state or other geographic area for delivering behavioral health services, medical services, nursing services, and health related services to individuals in the state or other geographic area.

~~23.~~ “Health oversight activity” means:

- ~~a. Supervision of the health care system,~~
- ~~b. Determining eligibility for health related government benefit programs,~~
- ~~c. Determining compliance with health related government regulatory programs, or~~
- ~~d. Determining compliance with civil rights laws for which health related information is relevant.~~

~~24.~~ “Health related services” means the same as in ~~A.R.S. § 36-401(24).~~

~~25.~~ “Homeless minor” means an individual described in ~~A.R.S. § 44-132(C).~~

~~26.~~ “Homeless shelter” means the same as in ~~A.R.S. § 16-121(D).~~

~~27-18.~~ “Human Subjects Review Board” means individuals designated by the Director to:

- a. Review human subjects research that is conducted, funded, or sponsored by the Department for consistency with 45 CFR Part 46, Subpart A, dealing with the protection of the human subjects;
- b. Review requests for Department information from external entities conducting or

- planning to conduct human subjects research; and
- c. Establish guidelines for the submission and review of human subjects research.
- ~~28-19.~~ 19. “Incapacitated person” means the same as in ~~A.R.S. § 14-5101(1)~~ A.R.S. § 14-5101.
- ~~29-20.~~ 20. “Incidence” means the rate of cases of a disease or an injury in a population, community, or region during a specified period.
- ~~30-21.~~ 21. “Individually identifiable health information” means the information described in ~~42-U.S.C. 1320d(6)~~ 42 U.S.C. 1320d.
- ~~31-22.~~ 22. “Injury” means trauma or damage to a part of the human body.
- ~~32.~~ 23. “Jurat” ~~means the same as in A.R.S. § 41-311(6).~~
- ~~33-23.~~ 24. “Legal guardian” means an individual:
- a. Appointed by a court of competent jurisdiction under ~~A.R.S. Title 8, Chapter 10, Article 5~~ A.R.S. Title 8, Chapter 4, Article 12 or A.R.S. Title 14, Chapter 5;
  - b. Appointed by a court of competent jurisdiction under another state’s laws for the protection of minors and incapacitated persons; or
  - c. Appointed for a minor or an incapacitated person in a probated will.
- ~~34-24.~~ 25. “Medical records” means the same as in ~~A.R.S. § 12-2291(5)~~ A.R.S. § 12-2291.
- ~~35-25.~~ 26. “Medical services” means the same as in ~~A.R.S. § 36-401(31)~~ A.R.S. § 36-401.
- ~~36-26.~~ 27. “Minor” means the same as in ~~A.R.S. § 36-798(5)~~ A.R.S. § 36-798.
- ~~37.~~ 28. “Nursing services” ~~means the same as in A.R.S. § 36-401(35).~~
- ~~38-27.~~ 29. “Outbreak” means an unexpected increase in the incidence of a disease as determined by the Department or a health agency, as defined in A.R.S. § 36-671(5) ~~A.R.S. § 36-671.~~
- ~~39-28.~~ 30. “Parent” means a biological or adoptive mother or father of an individual.
- ~~40-29.~~ 31. “Patient” means an individual receiving behavioral health services, medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401.
- ~~41-30.~~ 32. “Payment records” means the same as in ~~A.R.S. § 12-2291(6)~~ A.R.S. § 12-2291.
- ~~42.~~ 33. “Person” ~~means the same as in A.R.S. § 41-1001(13).~~
- ~~43-31.~~ 34. “Personal representative” means the same as in ~~A.R.S. § 14-1201(38)~~ A.R.S. § 14-1201.
- ~~44-32.~~ 35. “Probated will” means a will that has been proved as valid in a court of competent jurisdiction.
- ~~45.~~ 36. “Public health intervention” ~~means responding to and containing:~~
- a. ~~Outbreaks or epidemics of disease, or~~
  - b. ~~The incidence of injury.~~
- ~~46.~~ 37. “Public health investigation” ~~means identifying and examining:~~
- a. ~~Outbreaks or epidemics of disease, or~~

- b. ~~The incidence of injury.~~
- 47.33. “Public health records” means information created, obtained, or maintained by the Department for:
- a. Public health surveillance, ~~public health investigation, or public health intervention~~ to monitor the incidence and spread of a disease or an injury;
  - b. Public health investigation to identify and examine outbreaks or epidemics of disease or the incidence of injury;
  - c. Public health intervention to respond and contain outbreaks or epidemics of disease or the incidence of injury;
  - ~~b.d.~~ A system of public health statistics, as defined in A.R.S. § 36-301;
  - ~~e.e.~~ A system of vital records, as defined in A.R.S. § 36-301; or
  - ~~d.f.~~ Health oversight activities, which include the following:
    - i. Supervision of the health care system,
    - ii. Determining eligibility for health-related government benefit programs,
    - iii. Determining compliance with health-related government regulatory programs, or
    - iv. Determining compliance with civil rights laws for which health-related information is relevant; or
  - g. Other public health activities required or authorized by state or federal law.
48. ~~“Public health surveillance” means monitoring the incidence and spread of a disease or an injury.~~
- 49.34. “Research” means the same as in 45 CFR 164.501.
- 50.35. “State” means the same as in A.R.S. § 36-841.
- 51.36. “Surviving spouse” means the individual:
- a. To whom a deceased individual was married at the time of death, and
  - b. Who is currently alive.
52. ~~“System of public health statistics” means the same as in A.R.S. § 36-301(31).~~
53. ~~“System of vital records” means the same as in A.R.S. § 36-301(32).~~
- 54.37. “Third person” means a person other than:
- a. The individual identified by medical records; or
  - b. The individual’s parent, legal guardian, or other health care decision maker.
- 55.38. “Treatment” means a procedure or method to cure, improve, or palliate a disease or an injury.
- 56.39. “Valid authorization” means written permission to disclose individually identifiable

health information that contains all the elements described in 45 CFR 164.508(c)(1).

~~57. “Veteran” means the same as in 38 U.S.C. 101(2).~~

~~58. “Vital record” means the same as in A.R.S. § 36-301(33).~~

~~59.40.~~ “Volunteer” means an individual who works for the Department without compensation.

~~60.41.~~ “Will” means the same as in ~~A.R.S. § 14-1201(59)~~ A.R.S. § 14-1201.

**R9-1-302. Medical Records or Payment Records Disclosure**

**A.** Except as provided in subsection (B), an employee or volunteer shall not disclose to a third person medical records or payment records containing individually identifiable health information ~~that the employee or volunteer~~ obtained or accessed as a result of the employment or volunteering.

**B.** Unless otherwise prohibited by law, an employee or volunteer may disclose to a third person medical records or payment records containing individually identifiable health information:

1. With the valid authorization of the individual identified by the information in the medical records or payment records, if the individual:

- a. Is at least age 18 or an emancipated minor, and
- b. Is not an incapacitated person;

2. With the valid authorization of the parent, legal guardian, or other health care decision maker of the individual identified by the information in the medical records or payment records, if the individual is:

- a. Less than age 18, other than an emancipated minor; or
- b. An incapacitated person;

3. With the valid authorization of the individual identified by the information in the medical records or payment records, regardless of age, if:

- a. The information to be disclosed resulted from the consent given by the individual under ~~A.R.S. § 44-132.01~~ or A.R.S. § 36-663 or A.R.S. § 44-132.01 and,
- b. The individual is not an incapacitated person;

4. With the valid authorization of the individual identified by information in the medical records or payment records if:

- a. The information to be disclosed resulted from the individual’s treatment under A.R.S. § 44-133.01;
- b. The individual was at least age 12 at the time of the treatment under A.R.S. § 44-133.01 as established by documentation, such as a copy of the individual’s:
  - i. Driver license issued by a state, or
  - ii. Birth certificate; and

- c. The individual is not an incapacitated person;
  - 5. If the individual identified by the information in the medical records or payment records is deceased, upon the written request to the Department according to subsection (D) for disclosure of the deceased individual's medical records or payment records to:
    - a. The deceased individual's health care decision maker at the time of death;
    - b. The personal representative of the deceased individual's estate; or
    - c. If the deceased individual's estate has no personal representative, a person listed in ~~A.R.S. §§ 12-2294(D)(1) through 12-2294(D)(6)~~ A.R.S. § 12-2294(D);
  - 6. At the direction of the Human Subjects Review Board, if the medical records or payment records are sought for research and the disclosure meets the requirements of 45 CFR 164.512(i)(2); or
  - 7. As required by an order issued by a court of competent jurisdiction.
- C. For purposes of subsection (B)(1), an individual less than age 18 who claims emancipated minor status shall submit to the Department a valid authorization signed by the individual less than age 18 and:
- 1. A copy of an order emancipating the individual issued by the Superior Court of Arizona;
  - 2. If the individual was an emancipated minor in a state other than Arizona:
    - a. Documentation establishing that the individual is at least age 16, such as a copy of the individual's:
      - i. Driver license issued by a state, or
      - ii. Birth certificate; and
    - b. Documentation of the individual's emancipation, such as a copy of:
      - i. An order emancipating the individual issued by a court of competent jurisdiction of a state other than Arizona,
      - ii. A real property purchase agreement signed by the individual as the buyer or the seller in a state other than Arizona,
      - iii. An order for the individual to pay child support issued by a court of competent jurisdiction of a state other than Arizona, or
      - iv. ~~A financial institution loan agreement~~ with a financial institution, such as a bank, savings and loan association, a credit union, or a consumer lender, signed by the individual as the borrower in a state other than Arizona;
  - 3. A copy of the individual's marriage certificate issued by a state;
  - 4. If the individual is a homeless minor, as described in A.R.S. § 44-132, documentation

such as:

- a. A statement on the letterhead of a homeless shelter, as defined in A.R.S. § 16-121, or halfway house that:
  - i. Is dated within 10 calendar days before the date the Department receives the document,
  - ii. States the homeless shelter or halfway house is the individual's primary residence,
  - iii. Is signed by an authorized signer for the homeless shelter or halfway house, and
  - iv. States the authorized signer's title or position at the homeless shelter or halfway house; or
- b. A statement signed by the individual that:
  - i. The individual does not live with the individual's parents, and
  - ii. The individual lacks a fixed nighttime residence;
5. If the individual is a U.S. armed forces enlisted member, a copy of the individual's U.S. armed forces:
  - a. Enlistment document, or
  - b. Identification card; or
6. If the individual is a U.S. armed forces veteran, as defined in 38 U.S.C. 101, a copy of the individual's discharge certificate.

**D.** A request to the Department under subsection (B)(5) to disclose medical records or payment records shall include:

1. The name of the individual identified by the information in the medical records or payment records;
2. A statement that the individual identified by the information in the medical records or payment records is deceased;
3. The description and dates of the medical records or payment records requested;
4. The name, address, and telephone number of the person requesting the medical records or payment records disclosure;
5. Whether the person requesting the medical records or payment records disclosure:
  - a. Was the deceased individual's health care decision maker at the time of death,
  - b. Is the personal representative of the deceased individual's estate, or
  - c. Is a person listed in A.R.S. § 12-2294(D);
6. The signature of the individual requesting the medical records or payment records

disclosure;

7. Documentation that the individual identified by the information in the medical records or payment records is deceased, such as a copy of:
  - a. The individual's death certificate,
  - b. A published obituary notice for the individual, or
  - c. Written notification of the individual's death; and
8. Documentation establishing the relationship to the deceased individual indicated under subsection (D)(5), ~~such as a copy of~~ which includes the following:
  - a. Appointment as the deceased individual's legal guardian by a court of competent jurisdiction,
  - b. Appointment as the personal representative of the deceased individual's estate by a court of competent jurisdiction,
  - c. The deceased individual's birth certificate naming the person requesting the medical records or payment records as a parent,
  - d. The birth certificate of the person requesting the medical records or payment records naming the deceased individual as a parent, or
  - e. If the person requesting the medical records or payment records disclosure is the deceased individual's surviving spouse:
    - i. A copy of the person's marriage certificate naming the deceased individual as spouse, and
    - ~~ii. The person's statement that the person and the deceased individual were not divorced or legally separated at the time of the deceased individual's death, or~~
    - ~~iii-ii.~~ A copy of the deceased individual's probated will naming the person as the deceased individual's surviving spouse.

**E.** The Department shall send a response to a request for medical records or payment records disclosure under subsection (B)(5) that meets the requirements of subsection (D):

1. By regular mail,
2. To the address provided under subsection (D)(4), and
3. Within 30 days after the date the Department receives the request.

**R9-1-303. Public Health Records Disclosure**

**A.** A.R.S. Title 39, Chapter 1, Article 2, governs the Department's disclosure of public health records, except for:

1. Disclosure of public health records under A.R.S. §§ 36-104(9) and 36-105;

2. Disclosure of vital records, as defined in A.R.S. 36-301, under A.R.S. §§ 36-324, 36-342, and 36-351; ~~and~~
  3. At the direction of the Human Subjects Review Board, disclosure of public health records that are not de-identified when:
    - a. The public health records are sought for research, and
    - b. The disclosure meets the requirements of 45 CFR 164.512(i)(2)<sub>2</sub>;
  4. Disclosure of medical marijuana records under A.R.S. § 36-2810; or
  5. Other disclosures prohibited by state or federal law.
- B.** For disclosure of public health records under A.R.S. Title 39, Chapter 1, Article 2, an individual shall submit to the Department a public records request that contains:
1. The request date;
  2. The requester's name, and if applicable, the requester's mailing address, e-mail address, and telephone number;
  3. If applicable, the name, address, and telephone number of the requester's organization;
  4. A specific identification of the public health records to be disclosed, including the description and dates of the records;
  5. Whether the public health records identified in subsection (B)(4) will be used for commercial purposes;
  6. If the requester indicates under subsection (B)(5) that the public health records will be used for commercial purposes, an explanation of each commercial purpose;
  7. The requester's signature; and
  8. If the requester indicates under subsection (B)(5) that the public health records will be used for a commercial purpose:
    - a. A jurat, as defined in A.R.S. § 41-311, completed by an Arizona notary; or
    - b. A notarization from another state indicating that the notary:
      - i. Verified the signer's identity,
      - ii. Observed the signing of the document, and
      - iii. Heard the signer swear or affirm the truthfulness of the document.
- C.** Within 15 business days after the Department receives a public records request that meets the requirements in subsection (B) or at a later time agreed upon by the Department and the individual requesting the records, the Department shall respond to the request by:
1. Sending by regular mail or electronic mail to the address provided in subsection (B)(2):
    - a. An acknowledgement that the Department received the public records request;
    - b. A list of categories of public health records that are not subject to disclosure; and

- c. For the public health records requested that are subject to disclosure, a statement that the Department will notify the individual when disclosure will be provided;  
or
  - 2. Providing:
    - a. A list of categories of public health records that are not subject to disclosure; and
    - b. For the public health records requested that are subject to disclosure, disclosure of the records.
- D.** The Department shall ensure that public health records disclosed pursuant to a public records request are de-identified.
- E.** For copies of public health records disclosed pursuant to a public records request:
  - 1. If the copies are for a commercial purpose, the Department shall charge:
    - a. The amount determined according to A.R.S. § 39-121.03, and
    - b. Based on the requester's explanation under subsection (B)(6);
  - 2. If the copies are not for a commercial purpose, the Department shall charge twenty-five cents per page; or
  - 3. If the copies are for a purpose stated in A.R.S. § 39-122(A), the Department shall not impose a charge.

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES**  
**ADMINISTRATION**

**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE**

Section	
R9-1-101.	Definitions
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R9-1-103.	Rehearing or Review of a Final Administrative Decision
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R9-1-105.	Repealed
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R9-1-109.	Repealed
R9-1-110.	Repealed
R9-1-111.	Repealed
R9-1-112.	Repealed
R9-1-113.	Repealed
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R9-1-115.	Repealed
R9-1-116.	Repealed
R9-1-117.	Repealed
R9-1-118.	Repealed
R9-1-119.	Repealed
R9-1-120.	Repealed
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R9-1-204.	Repealed
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**ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS**

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R9-1-306.	Reserved
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R9-1-308.	Reserved
R9-1-309.	Reserved
R9-1-310.	Reserved
R9-1-311.	Repealed
R9-1-312.	Repealed
R9-1-313.	Repealed
R9-1-314.	Repealed
R9-1-315.	Repealed

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R9-1-404.	Reserved
R9-1-405.	Reserved
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R9-1-408.	Reserved
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R9-1-411.	Scope and applicability
R9-1-412.	Physical Plant Health and Safety Codes and Standards
R9-1-413.	Repealed
R9-1-414.	Repealed
R9-1-415.	Repealed
R9-1-416.	Repealed
R9-1-417.	Repealed
R9-1-418.	Repealed

**ARTICLE 5. SLIDING FEE SCHEDULES**

*Article 5, consisting of Sections R9-1-501 through R9-1-506, made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).*

Section	
R9-1-501.	Definitions
R9-1-502.	Family Member Determination
R9-1-503.	Family Income Determination
R9-1-504.	Sliding Fee Schedule Submission and Contents
R9-1-505.	Sliding Fee Schedule Approval Time-frames
R9-1-506.	Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule

**ARTICLE 1. RULES OF PRACTICE AND PROCEDURE****R9-1-101. Definitions**

- A.** In this Chapter, unless otherwise specified:
1. “Day” means a calendar day, and excludes the:
    - a. Day of the act or event from which a designated period of time begins to run; and
    - b. Last day of the period if a Saturday, Sunday, or official state holiday.
  2. “Department” means the Arizona Department of Health Services.
  3. “Director” means the Director of the Arizona Department of Health Services or an individual designated by the Director.
  4. “Rule” has the same meaning as in A.R.S. § 41-1001(17).
- B.** In this Article, unless otherwise specified:
1. “Administrative law judge” has the same meaning as in A.R.S. § 41-1092.
  2. “Appealable agency action” has the same meaning as in A.R.S. § 41-1092.
  3. “Contested case” has the same meaning as in A.R.S. § 41-1001.
  4. “Final administrative decision” has the same meaning as in A.R.S. § 41-1092.
  5. “Party” has the same meaning as in A.R.S. § 41-1001.

6. “Recommended decision” means the written ruling made by an administrative law judge regarding a contested case or appealable agency action within 20 days after a hearing under A.R.S. § 41-1092.07

**Historical Note**

Adopted effective April 13, 1990 (Supp. 90-2). Amended by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-102. Objection to a Recommended Decision**

- A.** Upon receipt of a copy of a recommended decision for a contested case or an appealable agency action, the Director may mail a copy of the recommended decision to each party.
- B.** A party has ten days from the date the Director mails the recommended decision to submit a memorandum of objections that states each reason why the recommended decision is in error, with information supporting the reason.
- C.** The Director may consider the memorandum of objections in determining whether to accept, reject, or modify the recommended decision.

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-103. Rehearing or Review of a Final Administrative Decision**

- A.** A party who is aggrieved by a final administrative decision may file with the Director, not later than 30 days after service of the final administrative decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review.
- B.** A party filing a motion for rehearing or review under this Section may amend the motion at any time before it is ruled upon by the Director. Any other party may file a response to the motion for rehearing or review within 15 days after the date the motion is filed with the Director. The director may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.
- C.** The Director may grant a rehearing or review of the final administrative decision for any of the following reasons materially affecting the requesting party’s rights:
1. Irregularity in the proceedings of the hearings or an abuse of discretion, that deprived the party of a fair hearing.
  2. Misconduct by the administrative law judge or the prevailing party,
  3. Accident or surprise that could not have been prevented by ordinary prudence,
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing,
  5. Excessive or insufficient penalties,
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing, or
  7. That the decision is not supported by the evidence or is contrary to law.
- D.** The Director shall rule on the motion within 15 days after the response to the motion is filed. If no response to the motion is filed, the Director shall rule on the motion within five days after the expiration of the response period.
- E.** An order issued by the Director granting a rehearing or review shall specify the grounds for the rehearing or review.

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-104. Repealed**

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-105. Repealed**

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-106. Repealed**

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-107. Repealed**

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-108. Repealed**

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-109. Repealed**

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-110. Repealed**

**Historical Note**

Adopted effective April 13, 1990 (Supp 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-111. Repealed**

**Historical Note**

Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-112. Repealed**

**Historical Note**

Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-113. Repealed**

**Historical Note**

Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-114. Repealed****Historical Note**

Amended Regulation 1-74. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-115. Repealed****Historical Note**

Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-116. Repealed****Historical Note**

Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-117. Repealed****Historical Note**

Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-118. Repealed****Historical Note**

Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-119. Repealed****Historical Note**

Amended Regulation 10-71 and 1-74. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-120. Repealed****Historical Note**

Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-121. Repealed****Historical Note**

Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-122. Repealed****Historical Note**

Amended Regulation 10-71 and 1-74. Repealed effective April 13, 1990 (Supp. 90-2).

**R9-1-123. Repealed****Historical Note**

Amended Regulation 10-71. Repealed effective April 13, 1990 (Supp. 90-2).

**R9-1-124. Repealed****Historical Note**

Repealed effective April 13, 1990 (Supp. 90-2).

**R9-1-125. Repealed****Historical Note**

Former Section R9-1-125 renumbered as Section R9-1-126, new Section R9-1-125 adopted effective May 12, 1977 (Supp. 77-3). Repealed effective April 13, 1990 (Supp. 90-2).

**R9-1-126. Repealed****Historical Note**

Former Section R9-1-125 renumbered as Section R9-1-126 effective May 12, 1977 (Supp. 77-3). Repealed effective April 13, 1990 (Supp. 90-2).

**ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING****R9-1-201. Definitions**

In addition to the definitions in R9-1-101(A), the following definitions apply in this Article, unless otherwise specified:

1. "Amendment" means a change to a rule, including added or deleted text.
2. "Arizona Administrative Code" means the publication described in A.R.S. § 41-1012.
3. "Citation" means the number that identifies a rule.
4. "Person" means the same as in A.R.S. § 41-1001(13).
5. "Rulemaking" means the same as in A.A.C. R1-1-101.
6. "Rulemaking record" means a file maintained by the Department as specified in A.R.S. § 41-1029.
7. "Substantive policy statement" means the same as in A.R.S. § 41-1001(20).
8. "Text" means a letter, number, symbol, table, or punctuation in a rule.

**Historical Note**

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

**R9-1-202. Rulemaking Record**

Except on a state holiday, an individual may review a rulemaking record at the Office of the Director, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-203. Petition for Department Rulemaking and Petition for Review of a Department Practice or Substantive Policy Statement**

A. A petition to the Department for rulemaking under A.R.S. § 41-1033 shall include:

1. The name and address of the individual who submits the petition;
2. An identification of the rulemaking, including:
  - a. A statement of the rulemaking sought,
  - b. The Arizona Administrative Code citation of each existing rule included in the petition, and
  - c. A description of each new rule included in the petition;
3. The specific text of each new rule or amendment;
4. The reasons for requesting the rulemaking, supported by:

- a. Statistical data;
  - b. If the statistical data refers to exhibits, the exhibits;
  - c. An identification of the persons who would be affected by the rulemaking and the type of effect; and
  - d. Other information supporting the rulemaking;
5. The signature of the individual who submits the petition;
  6. The date the petition is signed; and
  7. A copy of each existing rule included in the petition.
- B.** A petition to the Department under A.R.S. § 41-1033 for review of a Department practice or substantive policy statement that allegedly constitutes a rule shall include:
1. The name and address of the individual who submits the petition,
  2. The reasons why the Department's practice or substantive policy statement allegedly constitutes a rule,
  3. The signature of the individual who submits the petition,
  4. The date the petition is signed, and
  5. A copy of the Department's substantive policy statement or a description of the Department's practice.
- C.** According to A.R.S. § 41-1033(A), the Department shall notify an individual who submits a subsection (A) or subsection (B) petition of the Department's decision in writing within 60 days after receipt of the petition.
- D.** If the Department denies a subsection (A) or subsection (B) petition, the individual who submitted the petition may proceed according to either A.R.S. § 41-1033(B) or A.R.S. § 41-1034 or according to both A.R.S. § 41-1033(B) and A.R.S. § 41-1034.

**Historical Note**

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

**R9-1-204. Repealed****Historical Note**

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-205. Repealed****Historical Note**

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-206. Repealed****Historical Note**

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS**

**R9-1-301. Definitions**

In addition to the definitions in R9-1-101(A), the following definitions apply in this Article, unless otherwise specified:

1. "Behavioral health services" means the assessment, diagnosis, or treatment of an individual's mental, emotional, psychiatric, psychological, psychosocial, or substance abuse issues.
2. "Business day" means the same as in A.R.S. § 10-140.
3. "Commercial purpose" means the same as in A.R.S. § 39-121.03(D).
4. "Consent" means permission by an individual or by the individual's parent, legal guardian, or other health care decision maker to have medical services provided to the individual.
5. "Correctional facility" means the same as in A.R.S. § 13-2501(2).
6. "Court of competent jurisdiction" means a court with the authority to enter an order.
7. "De-identified" means a public health record from which the information listed in 45 CFR 164.514(b)(2)(i) for an individual and the individual's relatives, employers, or household members has been removed.
8. "Diagnosis" means an identification of a disease or an injury by an individual authorized by law to make the identification.
9. "Disclose" means to release, transfer, provide access to, or divulge information in any other manner.
10. "Disclosure" means the release, transfer, provision of access to, or divulging of information in any other manner by the person holding the information.
11. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
12. "Documentation" means written supportive evidence.
13. "Emancipated minor" means an individual less than age 18 who:
  - a. Is determined to be independent of parents or legal guardians under A.R.S. Title 12, Chapter 15, Article 1, as added by Laws 2005, Chapter 137, § 3, effective August 12, 2005;
  - b. Meets the requirements for recognition as an emancipated minor in A.R.S. § 12-2455, as added by Laws 2005, Chapter 137, § 3, effective August 12, 2005;
  - c. Has the ability to make a contract under A.R.S. § 44-131 or to consent to medical services under A.R.S. § 44-132; or
  - d. Is married or is a U.S. armed forces enlisted member.
14. "Employee" means an individual who works for the Department for compensation.
15. "Enlisted member" means the same as in 32 U.S.C. 101(9).
16. "Epidemic" means a disease that affects a disproportionately large number of individuals in a population, community, or region at the same time.
17. "Estate" means the same as in A.R.S. § 14-1201(16).
18. "Financial institution" means a bank, a savings and loan association, a credit union, or a consumer lender.
19. "Halfway house" means a residential facility that temporarily provides shelter, food, and other services to an individual after the individual completes a confinement in a correctional facility or a stay in a health care institution.
20. "Health care decision maker" means the same as in A.R.S. § 12-2291(3).
21. "Health care institution" means the same as in A.R.S. § 36-401(23).
22. "Health care system" means the facilities, personnel, and financial resources in place in a state or other geographic area for delivering behavioral health services, medical services, nursing services, and health-related services to individuals in the state or other geographic area.
23. "Health oversight activity" means:
  - a. Supervision of the health care system,

- b. Determining eligibility for health-related government benefit programs,
  - c. Determining compliance with health-related government regulatory programs, or
  - d. Determining compliance with civil rights laws for which health-related information is relevant.
24. "Health-related services" means the same as in A.R.S. § 36-401(24).
25. "Homeless minor" means an individual described in A.R.S. § 44-132(C).
26. "Homeless shelter" means the same as in A.R.S. § 16-121(D).
27. "Human Subjects Review Board" means individuals designated by the Director to:
- a. Review human subjects research that is conducted, funded, or sponsored by the Department for consistency with 45 CFR Part 46, Subpart A, dealing with the protection of the human subjects;
  - b. Review requests for Department information from external entities conducting or planning to conduct human subjects research; and
  - c. Establish guidelines for the submission and review of human subjects research.
28. "Incapacitated person" means the same as in A.R.S. § 14-5101(1).
29. "Incidence" means the rate of cases of a disease or an injury in a population, community, or region during a specified period.
30. "Individually identifiable health information" means the information described in 42 U.S.C. 1320d(6).
31. "Injury" means trauma or damage to a part of the human body.
32. "Jurat" means the same as in A.R.S. § 41-311(6).
33. "Legal guardian" means an individual:
- a. Appointed by a court of competent jurisdiction under A.R.S. Title 8, Chapter 10, Article 5 or A.R.S. Title 14, Chapter 5;
  - b. Appointed by a court of competent jurisdiction under another state's laws for the protection of minors and incapacitated persons; or
  - c. Appointed for a minor or an incapacitated person in a probated will.
34. "Medical records" means the same as in A.R.S. § 12-2291(5).
35. "Medical services" means the same as in A.R.S. § 36-401(31).
36. "Minor" means the same as in A.R.S. § 36-798(5).
37. "Nursing services" means the same as in A.R.S. § 36-401(35).
38. "Outbreak" means an unexpected increase in the incidence of a disease as determined by the Department or a health agency defined in A.R.S. § 36-671(5).
39. "Parent" means a biological or adoptive mother or father of an individual.
40. "Patient" means an individual receiving behavioral health services, medical services, nursing services, or health-related services.
41. "Payment records" means the same as in A.R.S. § 12-2291(6).
42. "Person" means the same as in A.R.S. § 41-1001(13).
43. "Personal representative" means the same as in A.R.S. § 14-1201(38).
44. "Probated will" means a will that has been proved as valid in a court of competent jurisdiction.
45. "Public health intervention" means responding to and containing:
- a. Outbreaks or epidemics of disease, or
  - b. The incidence of injury.
46. "Public health investigation" means identifying and examining:
- a. Outbreaks or epidemics of disease, or
  - b. The incidence of injury.
47. "Public health records" means information created, obtained, or maintained by the Department for:
- a. Public health surveillance, public health investigation, or public health intervention;
  - b. A system of public health statistics;
  - c. A system of vital records; or
  - d. Health oversight activities.
48. "Public health surveillance" means monitoring the incidence and spread of a disease or an injury.
49. "Research" means the same as in 45 CFR 164.501.
50. "State" means the same as in A.R.S. § 36-841.
51. "Surviving spouse" means the individual:
- a. To whom a deceased individual was married at the time of death, and
  - b. Who is currently alive.
52. "System of public health statistics" means the same as in A.R.S. § 36-301(31).
53. "System of vital records" means the same as in A.R.S. § 36-301(32).
54. "Third person" means a person other than:
- a. The individual identified by medical records; or
  - b. The individual's parent, legal guardian, or other health care decision maker:
55. "Treatment" means a procedure or method to cure, improve, or palliate a disease or an injury.
56. "Valid authorization" means written permission to disclose individually identifiable health information that contains all the elements described in 45 CFR 164.508(c)(1).
57. "Veteran" means the same as in 38 U.S.C. 101(2).
58. "Vital record" means the same as in A.R.S. § 36-301(33).
59. "Volunteer" means an individual who works for the Department without compensation.
60. "Will" means the same as in A.R.S. § 14-1201(59).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

#### **R9-1-302. Medical Records or Payment Records Disclosure**

- A.** Except as provided in subsection (B), an employee or volunteer shall not disclose to a third person medical records or payment records containing individually identifiable health information that the employee or volunteer obtained or accessed as a result of the employment or volunteering.
- B.** Unless otherwise prohibited by law, an employee or volunteer may disclose to a third person medical records or payment records containing individually identifiable health information:
  - 1. With the valid authorization of the individual identified by the information in the medical records or payment records, if the individual:
    - a. Is at least age 18 or an emancipated minor, and
    - b. Is not an incapacitated person;
  - 2. With the valid authorization of the parent, legal guardian, or other health care decision maker of the individual identified by the information in the medical records or payment records, if the individual is:
    - a. Less than age 18, other than an emancipated minor; or
    - b. An incapacitated person;

3. With the valid authorization of the individual identified by the information in the medical records or payment records, regardless of age, if:
    - a. The information to be disclosed resulted from the consent given by the individual under A.R.S. § 44-132.01 or A.R.S. § 36-663; and
    - b. The individual is not an incapacitated person;
  4. With the valid authorization of the individual identified by information in the medical records or payment records if:
    - a. The information to be disclosed resulted from the individual's treatment under A.R.S. § 44-133.01;
    - b. The individual was at least age 12 at the time of the treatment under A.R.S. § 44-133.01 as established by documentation, such as a copy of the individual's:
      - i. Driver license issued by a state, or
      - ii. Birth certificate; and
    - c. The individual is not an incapacitated person;
  5. If the individual identified by the information in the medical records or payment records is deceased, upon the written request to the Department according to subsection (D) for disclosure of the deceased individual's medical records or payment records to:
    - a. The deceased individual's health care decision maker at the time of death;
    - b. The personal representative of the deceased individual's estate; or
    - c. If the deceased individual's estate has no personal representative, a person listed in A.R.S. §§ 12-2294(D)(1) through 12-2294(D)(6);
  6. At the direction of the Human Subjects Review Board, if the medical records or payment records are sought for research and the disclosure meets the requirements of 45 CFR 164.512(i)(2); or
  7. As required by an order issued by a court of competent jurisdiction.
- C.** For purposes of subsection (B)(1), an individual less than age 18 who claims emancipated minor status shall submit to the Department a valid authorization signed by the individual less than age 18 and:
1. A copy of an order emancipating the individual issued by the Superior Court of Arizona;
  2. If the individual was an emancipated minor in a state other than Arizona:
    - a. Documentation establishing that the individual is at least age 16, such as a copy of the individual's:
      - i. Driver license issued by a state, or
      - ii. Birth certificate; and
    - b. Documentation of the individual's emancipation, such as a copy of:
      - i. An order emancipating the individual issued by a court of competent jurisdiction of a state other than Arizona,
      - ii. A real property purchase agreement signed by the individual as the buyer or the seller in a state other than Arizona,
      - iii. An order for the individual to pay child support issued by a court of competent jurisdiction of a state other than Arizona, or
      - iv. A financial institution loan agreement signed by the individual as the borrower in a state other than Arizona;
  3. A copy of the individual's marriage certificate issued by a state;
4. If the individual is a homeless minor, documentation such as:
    - a. A statement on the letterhead of a homeless shelter or halfway house that:
      - i. Is dated within 10 days before the date the Department receives the document,
      - ii. States the homeless shelter or halfway house is the individual's primary residence,
      - iii. Is signed by an authorized signer for the homeless shelter or halfway house, and
      - iv. States the authorized signer's title or position at the homeless shelter or halfway house; or
    - b. A statement signed by the individual that:
      - i. The individual does not live with the individual's parents, and
      - ii. The individual lacks a fixed nighttime residence;
  5. If the individual is a U.S. armed forces enlisted member, a copy of the individual's U.S. armed forces:
    - a. Enlistment document, or
    - b. Identification card; or
  6. If the individual is a U.S. armed forces veteran, a copy of the individual's discharge certificate.
- D.** A request to the Department under subsection (B)(5) to disclose medical records or payment records shall include:
1. The name of the individual identified by the information in the medical records or payment records;
  2. A statement that the individual identified by the information in the medical records or payment records is deceased;
  3. The description and dates of the medical records or payment records requested;
  4. The name, address, and telephone number of the person requesting the medical records or payment records disclosure;
  5. Whether the person requesting the medical records or payment records disclosure:
    - a. Was the deceased individual's health care decision maker at the time of death,
    - b. Is the personal representative of the deceased individual's estate, or
    - c. Is a person listed in A.R.S. § 12-2294(D);
  6. The signature of the individual requesting the medical records or payment records disclosure;
  7. Documentation that the individual identified by the information in the medical records or payment records is deceased, such as a copy of:
    - a. The individual's death certificate,
    - b. A published obituary notice for the individual, or
    - c. Written notification of the individual's death; and
  8. Documentation establishing the relationship to the deceased individual indicated under subsection (D)(5), such as a copy of:
    - a. Appointment as the deceased individual's legal guardian by a court of competent jurisdiction,
    - b. Appointment as the personal representative of the deceased individual's estate by a court of competent jurisdiction,
    - c. The deceased individual's birth certificate naming the person requesting the medical records or payment records as a parent,
    - d. The birth certificate of the person requesting the medical records or payment records naming the deceased individual as a parent, or

- e. If the person requesting the medical records or payment records disclosure is the deceased individual's surviving spouse:
  - i. A copy of the person's marriage certificate naming the deceased individual as spouse, and
  - ii. The person's statement that the person and the deceased individual were not divorced or legally separated at the time of the deceased individual's death, or
  - iii. A copy of the deceased individual's probated will naming the person as the deceased individual's surviving spouse.
- E. The Department shall send a response to a request for medical records or payment records disclosure under subsection (B)(5) that meets the requirements of subsection (D):
  - 1. By regular mail,
  - 2. To the address provided under subsection (D)(4), and
  - 3. Within 30 days after the date the Department receives the request.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

#### R9-1-303. Public Health Records Disclosure

- A. A.R.S. Title 39, Chapter 1, Article 2 governs the Department's disclosure of public health records, except for:
  - 1. Disclosure of public health records under A.R.S. §§ 36-104(9) and 36-105;
  - 2. Disclosure of vital records under A.R.S. §§ 36-324, 36-342, and 36-351; and
  - 3. At the direction of the Human Subjects Review Board, disclosure of public health records that are not de-identified when:
    - a. The public health records are sought for research, and
    - b. The disclosure meets the requirements of 45 CFR 164.512(i)(2).
- B. For disclosure of public health records under A.R.S. Title 39, Chapter 1, Article 2, an individual shall submit to the Department a public records request that contains:
  - 1. The request date;
  - 2. The requester's name, address, and telephone number;
  - 3. If applicable, the name, address, and telephone number of the requester's organization;
  - 4. A specific identification of the public health records to be disclosed, including the description and dates of the records;
  - 5. Whether the public health records identified in subsection (B)(4) will be used for commercial purposes;
  - 6. If the requester indicates under subsection (B)(5) that the public health records will be used for commercial purposes, an explanation of each commercial purpose;
  - 7. The requester's signature; and
  - 8. If the requester indicates under subsection (B)(5) that the public health records will be used for a commercial purpose:
    - a. A jurat completed by an Arizona notary; or
    - b. A notarization from another state indicating that the notary:
      - i. Verified the signer's identity,
      - ii. Observed the signing of the document, and
      - iii. Heard the signer swear or affirm the truthfulness of the document.
- C. Within 15 business days after the Department receives a public records request that meets the requirements in subsection (B) or at a later time agreed upon by the Department and the indi-

vidual requesting the records, the Department shall respond to the request by:

- 1. Sending by regular mail to the address provided in subsection (B)(2):
  - a. An acknowledgement that the Department received the public records request;
  - b. A list of categories of public health records that are not subject to disclosure; and
  - c. For the public health records requested that are subject to disclosure, a statement that the Department will notify the individual when disclosure will be provided; or
- 2. Providing:
  - a. A list of categories of public health records that are not subject to disclosure; and
  - b. For the public health records requested that are subject to disclosure, disclosure of the records.
- D. The Department shall ensure that public health records disclosed pursuant to a public records request are de-identified.
- E. For copies of public health records disclosed pursuant to a public records request:
  - 1. If the copies are for a commercial purpose, the Department shall charge:
    - a. The amount determined according to A.R.S. § 39-121.03, and
    - b. Based on the requester's explanation under subsection (B)(6);
  - 2. If the copies are not for a commercial purpose, the Department shall charge twenty-five cents per page; or
  - 3. If the copies are for a purpose stated in A.R.S. § 39-122(A), the Department shall not impose a charge.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

**R9-1-304. Reserved**

**R9-1-305. Reserved**

**R9-1-306. Reserved**

**R9-1-307. Reserved**

**R9-1-308. Reserved**

**R9-1-309. Reserved**

**R9-1-310. Reserved**

**R9-1-311. Repealed**

#### Historical Note

Amended by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

**R9-1-312. Repealed**

#### Historical Note

Amended by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

**R9-1-313. Repealed**

#### Historical Note

Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-314. Repealed****Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**R9-1-315. Repealed****Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

**ARTICLE 4. CODES AND STANDARDS REFERENCED****R9-1-401. Reserved****R9-1-402. Reserved****R9-1-403. Reserved****R9-1-404. Reserved****R9-1-405. Reserved****R9-1-406. Reserved****R9-1-407. Reserved****R9-1-408. Reserved****R9-1-409. Reserved****R9-1-410. Reserved****R9-1-411. Scope and Applicability**

- A.** Codes and standards referenced elsewhere in this Title are listed in this Article for convenience in making periodic revisions as new editions become available. Before applying referenced codes and standards, the effective date shown at the end of the applicable regulation within this Article should be checked and the Department or the Secretary of State contacted to assure that the proper edition of the applicable regulation is being utilized.
- B.** Other jurisdictions -- federal, county, city or other state agencies -- may have applicable requirements which may be additional (such as local zoning ordinances, state and federal occupational safety and health standards) or more restrictive than the minimum requirements established by these rules and regulations (such as local building codes and county health standards).  
It is the responsibility of the applicant or licensee, or his agent, to assure that he is in compliance with all such requirements.
- C.** Where conflicts occur among the standards established in this Title, the following rules of construction shall apply:
- Standards specified in the narrative portions of the regulations shall govern over the standards adopted by reference.
  - If a conflict occurs among the standards adopted by reference, the more restrictive standard shall govern over the less restrictive.
- D.** Provisions in the structural codes and standards listed in R9-1-412, relating to purpose, scope, enforcement, exceptions and other administrative matters shall be applied except that:
- Provisions specifying penalties are excluded from the provisions adopted as regulations.
  - Provisions relating to buildings, structures or facilities subject to licensure by the Department existing at the time an applicable code is adopted, or at the time an existing facility first becomes subject to such provisions, shall be administered in accordance with the following:
    - Readily correctable deficiencies (those deficiencies posing a hazard which can be corrected to comply

with a code adopted by reference within the period ending one year after the expiration of the institution's then existing license) shall be corrected as soon as practicable and before the expiration of the institution's then existing license or, if the Department determines additional time is needed, before the expiration of the next provisional license. The period of time for correction shall begin with the notification by the Department that a deficiency or deficiencies exist as a result of a code adopted by reference and that the deficiency, or each such deficiency, is determined by the Department to pose a hazard to the welfare of patients or employees of the facility. Following such notice the licensee shall meet a reasonable timetable for correction fixed by the Department which shall specify the periods for:

- Submission of a satisfactory written plan for correction of the deficiencies, if necessary.
  - Submission of preliminary drawings, if necessary.
  - Submission of working drawings, if necessary.
  - Completion of the modification or construction.
- b.** Major deficiencies (those deficiencies posing a hazard which cannot be corrected to comply with a code adopted by reference within the maximum period allowable by subparagraph (2)(a)) shall be corrected within three years after being notified by the Department that a major deficiency or major deficiencies exist as a result of a code adopted by reference and that the deficiency or each such deficiency is determined by the Department to pose a hazard to the welfare of patients or employees of the facility. Following such notice the licensee shall meet a reasonable timetable for correction fixed by the Department. The time for completion of construction shall not exceed three years and shall specify the periods for:
- Submission of a satisfactory written plan for correction of the deficiencies, if necessary.
  - Submission of preliminary drawings, if necessary.
  - Submission of working drawings, if necessary.
  - Completion of the modification or construction.
- c.** If the plan for correction shows that the entire building in which major deficiencies exist will be replaced with a newly-constructed building, the Department may allow up to two additional years for the completion of construction if it determines that maximum time period allowable under subparagraph (2)(b) is insufficient.

**R9-1-412. Physical Plant Health and Safety Codes and Standards**

- A.** The following physical plant health and safety codes and standards are incorporated by reference as modified, are on file with the Department, and include no future editions or amendments:
- Guidelines for Design and Construction of Health Care Facilities (2010 ed.), published by the American Society for Healthcare Engineering and available from The Facility Guidelines Institute at [www.fgiguilines.org](http://www.fgiguilines.org);
  - The following National Fire Codes (2012), published by and available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, and at [www.nfpa.org/catalog](http://www.nfpa.org/catalog):
    - NFPA70 National Electrical Code,
    - NFPA101 Life Safety Code, and

- c. 2012 Supplements;
3. International Building Code (2012), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
    - a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
    - b. Section 101.2 is modified by deleting the “Exception”;
    - c. Sections 103.1 through 103.3 are deleted;
    - d. Sections 104.1 through 104.11.2 are deleted;
    - e. Sections 105.1 through 105.7 are deleted;
    - f. Sections 106.1 through 106.3 are deleted;
    - g. Sections 107.1 through 107.5 are deleted;
    - h. Sections 108.1 through 108.4 are deleted;
    - i. Sections 109.1 through 109.6 are deleted;
    - j. Sections 110.1 through 110.6 are deleted;
    - k. Sections 111.1 through 111.4 are deleted;
    - l. Sections 112.1 through 112.3 are deleted;
    - m. Sections 113.1 through 113.3 are deleted;
    - n. Sections 114.1 through 114.4 are deleted;
    - o. Sections 115.1 through 115.3 are deleted;
    - p. Sections 116.1 through 116.5 are deleted;
    - q. Section 3401.3 is modified by deleting “International Residential Code,” “International Energy Conservation Code,” and “International Property Maintenance Code”; and
    - r. Appendices A, B, C, D, K, L, and M are deleted;
  4. International Mechanical Code (2012), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
    - a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
    - b. Sections 103.1 through 103.4 are deleted,
    - c. Sections 104.1 through 104.7 are deleted,
    - d. Sections 105.1 through 105.4 are deleted,
    - e. Sections 106.1 through 106.5.3 are deleted,
    - f. Sections 107.1 through 107.6 are deleted,
    - g. Sections 108.1 through 108.7.3 are deleted,
    - h. Sections 109.1 through 109.7 are deleted,
    - i. Sections 110.1 through 110.4 are deleted, and
    - j. Appendix B is deleted;
  5. International Plumbing Code (2012), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
    - a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
    - b. Sections 103.1 through 103.4 are deleted,
    - c. Sections 104.1 through 104.7 are deleted,
    - d. Sections 105.1 through 105.4 are deleted,
    - e. Sections 106.1 through 106.6.3 are deleted,
    - f. Sections 107.1 through 107.7 are deleted,
    - g. Sections 108.1 through 108.7.3 are deleted,
    - h. Sections 109.1 through 109.7 are deleted,
    - i. Sections 110.1 through 110.4 are deleted, and
    - j. Appendix A is deleted;
  6. International Fire Code (2012), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
    - a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
    - b. Sections 103.1 through 103.4 are deleted,
    - c. Sections 104.1 through 104.7 are deleted,
    - d. Sections 105.1 through 105.4 are deleted,
    - e. Sections 106.1 through 106.6.3 are deleted,
    - f. Sections 107.1 through 107.7 are deleted,
    - g. Sections 108.1 through 108.7.3 are deleted,
    - h. Sections 109.1 through 109.7 are deleted,
    - i. Sections 110.1 through 110.4 are deleted, and
    - j. Appendix A is deleted;
  7. ICC/A117.1-2009, American National Standard: Accessible and Usable Buildings and Facilities (2009), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org;
  8. International Fuel Gas Code (2012), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
    - a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
    - b. Section 101.2 is modified by deleting the “Exception”;
    - c. Sections 103.1 through 103.4 are deleted,
    - d. Sections 104.1 through 104.7 are deleted,
    - e. Sections 105.1 through 105.5 are deleted,
    - f. Sections 106.1 through 106.6.3 are deleted,
    - g. Sections 107.1 through 107.6 are deleted,
    - h. Sections 108.1 through 108.7.3 are deleted,
    - i. Sections 109.1 through 109.7 are deleted, and
    - j. Sections 110.1 through 110.4 are deleted;
  9. International Private Sewage Disposal Code (2012), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
    - a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
    - b. Sections 103.1 through 103.4 are deleted,
    - c. Sections 104.1 through 104.7 are deleted,
    - d. Sections 105.1 through 105.4 are deleted,
    - e. Sections 106.1 through 106.4.3 are deleted,
    - f. Sections 107.1 through 107.7 are deleted,
    - g. Sections 108.1 through 108.7.2 are deleted,
    - h. Sections 109.1 through 109.7 are deleted, and
    - i. Sections 110.1 through 110.4 are deleted.
- B.** The Department shall not assess any penalty or fee specified in the physical plant health and safety codes and standards that are incorporated by reference in this Section.

#### Historical Note

- Amended effective December 12, 1975 (Supp. 75-2).  
 Amended effective February 12, 1981 (Supp. 81-1).  
 Amended effective January 5, 1987 (Supp. 87-1).  
 Amended effective April 4, 1994 (Supp. 94-2). Amended effective April 3, 1996 (Supp. 96-2). Amended by final rulemaking at 6 A.A.R. 4724, effective November 28, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 4459, effective October 2, 2002 (Supp. 02-4).  
 Amended by final rulemaking at 13 A.A.R. 4505, effective February 2, 2008 (Supp. 07-4). Amended by exempt rulemaking at 19 A.A.R. 1800, effective October 1, 2013 (Supp. 13-2).

**R9-1-413. Repealed**

**Historical Note**

Amended effective February 12, 1981 (Supp. 81-1).  
Section repealed by final rulemaking at 8 A.A.R. 5077,  
effective November 22, 2002 (Supp. 02-4).

**R9-1-414. Repealed**

**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Section  
repealed by final rulemaking at 8 A.A.R. 5077, effective  
November 22, 2002 (Supp. 02-4).

**R9-1-415. Repealed**

**Historical Note**

Amended effective February 12, 1981 (Supp. 81-1).  
Correction, subsection (A) DHEW Publication number  
from (FDA) 48-2091 to (FDA) 78-2091 (Supp. 83-3).  
Section repealed by final rulemaking at 8 A.A.R. 5077,  
effective November 22, 2002 (Supp. 02-4).

**R9-1-416. Repealed**

**Historical Note**

Amended effective February 12, 1981 (Supp. 81-1).  
Section repealed by final rulemaking at 8 A.A.R. 5077,  
effective November 22, 2002 (Supp. 02-4).

**R9-1-417. Repealed**

**Historical Note**

Amended effective February 12, 1981 (Supp. 81-1).  
Section repealed by final rulemaking at 8 A.A.R. 5077,  
effective November 22, 2002 (Supp. 02-4).

**R9-1-418. Repealed**

**Historical Note**

Repealed effective February 12, 1981 (Supp. 81-1).

**ARTICLE 5. SLIDING FEE SCHEDULES**

**R9-1-501. Definitions**

In this Article, unless otherwise specified:

1. "Administrative fee" means a fee payable by an uninsured individual that is established and charged according to R9-1-506(E).
2. "AHCCCS" means the Arizona Health Care Cost Containment System.
3. "Business day" means the same as in A.R.S. § 10-140.
4. "Calendar year" means January 1 through December 31.
5. "Child" means an individual under age 19.
6. "Consideration" means valuable compensation for something received or to be received.
7. "Correctional facility" means the same as in A.R.S. § 13-2501.
8. "Costs of producing rental income" means payments made by a rental-income recipient that are attributable to the premises or the portion of the premises generating the income, including payments for:
  - a. Property taxes,
  - b. Insurance premiums,
  - c. Mortgage principal and interest,
  - d. Utilities, and
  - e. Maintenance and repair.
9. "Costs of producing self-employment income" means payments made by a self-employment-income recipient that are attributable to generating the income, including payments for:
  - a. Equipment, machinery, and real estate;

- b. Labor;
  - c. Inventory;
  - d. Raw materials;
  - e. Insurance premiums;
  - f. Rent; and
  - g. Utilities.
10. "Current federal poverty guidelines" means the most recent annual update of the U.S. Department of Health and Human Services' Poverty Guidelines published in the Federal Register.
  11. "Deduction" means a dollar amount subtracted from a payment, before an individual receives the payment, for:
    - a. Federal income tax,
    - b. Social Security tax,
    - c. Medicare tax,
    - d. State income tax,
    - e. Insurance other than OASDI,
    - f. Pension, or
    - g. Other dollar amounts required by law or authorized by the individual to be subtracted.
  12. "Department" means the Department of Health Services.
  13. "Detention facility" means a place of confinement, including:
    - a. A juvenile facility under the jurisdiction of:
      - i. A county board of supervisors, or
      - ii. A county jail district authorized by A.R.S. Title 48, Chapter 25;
    - b. A juvenile secure care facility under the jurisdiction of the Department of Juvenile Corrections; or
    - c. A facility for individuals who are not United States citizens and who are in the custody of the U.S. Immigration and Customs Enforcement, Department of Homeland Security.
  14. "Earned income" means work-related payments received by an individual, including:
    - a. Wages,
    - b. Commissions and fees,
    - c. Salary,
    - d. Profit from self-employment,
    - e. Profit from rent received from an individual or entity, and
    - f. Any other work-related monetary payments received by an individual.
  15. "Family income" means the dollar amount determined according to R9-1-503(B).
  16. "Family member" means an individual, determined according to R9-1-502, whose income is included in family income.
  17. "Fee percentage" means a part of a provider's usual charges for medical services that is:
    - a. Expressed in hundredths, and
    - b. Established by a provider in a sliding fee schedule for medical services rendered to an uninsured individual.
  18. "Fetus" means the same as in A.R.S. § 36-2152.
  19. "Flat fee" means a dollar amount that is:
    - a. Established by a provider in a sliding fee schedule for a medical service or group of medical services rendered to an uninsured individual, and
    - b. Less than the provider's usual charges for the medical service or group of medical services.
  20. "Gift" means money, real property, personal property, a service, or anything of value other than unearned income for which the recipient does not provide consideration of equal or greater value.

21. "Hospital services" means the same as in A.A.C. R9-10-201.
22. "Income" means combined earned and unearned income.
23. "Inpatient services" means hospital services provided to an individual who will receive the services for 24 consecutive hours or more.
24. "Interrupted income" means income that stops for at least 30 continuous days during the current calendar year and then resumes.
25. "KidsCare" means the children's health insurance program, a federally funded program administered by AHC-CCS under A.R.S. Title 36, Chapter 29, Article 4.
26. "Lowest contracted charge" means the smallest reimbursement a provider has agreed to accept for a medical service:
  - a. Determined by the provider's review of all the contracts between the provider and third party payors as defined in A.R.S. § 36-125.07(C), that:
    - i. Cover the medical service, and
    - ii. Are in effect at the time the medical service is provided to an uninsured individual; and
  - b. Subject to limitations of federal or state laws, rules, or regulations.
27. "Medical services" means the same as in A.R.S. § 36-401.
28. "Medicare tax" means the dollar amount subtracted from a payment for the health care insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.
29. "New income" means income that begins at least 30 days after the start of the current calendar year.
30. "OASDI" means old age, survivors, and disability insurance.
31. "Profit" means the remainder after subtracting:
  - a. The costs of producing rental income from the rent received from an individual or entity, or
  - b. The costs of producing self-employment income from the self-employment.
32. "Provider" means an individual or entity that:
  - a. Provides medical services;
  - b. Participates in a program that requires participants to use a sliding fee schedule, such as a program authorized under A.R.S. §§ 36-104(16), 36-2907.06, 36-2172, or 36-2174;
  - c. Includes:
    - i. A dentist licensed under A.R.S. Title 32, Chapter 11;
    - ii. A physician licensed under A.R.S. Title 32, Chapter 13 or Chapter 17;
    - iii. A registered nurse practitioner defined in A.R.S. § 32-1601 and licensed under A.R.S. Title 32, Chapter 15;
    - iv. A physician assistant licensed under A.R.S. Title 32, Chapter 25 and practicing according to A.R.S. § 32-2531;
    - v. A health care institution licensed under A.R.S. Title 36, Chapter 4; or
    - vi. An office or facility that is exempt from licensing under A.R.S. § 36-402(A)(3); and
  - d. Excludes an individual or entity when the individual or entity provides:
    - i. Inpatient services,
    - ii. Medical services at a correctional facility, or
    - iii. Medical services at a detention facility.
33. "Secure care" means the same as in A.R.S. § 41-2801.
34. "Self employment" means earning income from one's own business, trade, or profession rather than receiving a salary or wages from an employer.
35. "Sliding fee" means flat fee or fee percentage that increases or decreases based on one or more factors.
36. "Sliding fee schedule" means a document containing a provider's flat fees or fee percentages based on:
  - a. Family members determined according to R9-1-502, and
  - b. Family income determined according to R9-1-503.
37. "Social Security tax" means the dollar amount subtracted from a payment for OASDI under Title II of the Social Security Act, 42 U.S.C. 401 et seq.
38. "State health benefits risk pool" means:
  - a. A state-established organization qualifying under 26 U.S.C. 501(c)(26);
  - b. A state-established qualified high risk pool described in Section 2744(c)(2) of the Public Health Service Act, 42 U.S.C. 300gg-44(c)(2); or
  - c. A state-sponsored arrangement, for which the state specifies the membership, primarily established and maintained to provide health insurance coverage for state residents with a medical condition or a history of a medical condition that:
    - i. Prevents them from obtaining coverage for the condition through insurance or from a health maintenance organization, or
    - ii. Enables them to obtain coverage for the condition only at a rate substantially more than the rate available through the state-sponsored arrangement.
39. "Support payment" means a dollar amount, received at regular intervals by an individual, for food, shelter, furniture, clothing, and medical expenses.
40. "Terminated income" means income received during the current calendar year that stops and will not resume.
41. "Training stipend" means a dollar amount, received at regular intervals by an individual, during a course or program for the development of the individual's skills.
42. "Unearned income" means payments received by an individual that are not gifts and not earned income, including:
  - a. Unemployment insurance;
  - b. Workers' compensation;
  - c. Disability payments;
  - d. Social Security payments;
  - e. Public assistance payments, excluding food stamps;
  - f. Periodic insurance or annuity payments;
  - g. Retirement or pension payments;
  - h. Strike benefits from union funds;
  - i. Training stipends;
  - j. Child support payments;
  - k. Alimony payments;
  - l. Military family allotments or other support payments from a relative or other individual not residing with the recipient;
  - m. Investment income;
  - n. Royalty payments;
  - o. Periodic payments from estates or trusts; and
  - p. Any other monetary payments received by an individual that are not gifts, earned income, capital gains, lump-sum inheritance or insurance payments, or payments made to compensate for personal injury.
43. "Uninsured individual" means an individual who does not have health care coverage under any of the following:

- a. A group health plan as defined in Section 2792(a)(1) of the Public Health Service Act, 42 U.S.C. 300gg-91(a)(1), including a small employer's group health plan under A.R.S. Title 20, Chapter 13 or under the laws of another state;
  - b. A church plan as defined in section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(33);
  - c. Medicare, the health insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.;
  - d. Medicaid, the program that pays for medical assistance for certain individuals and families with low incomes and resources, through AHCCCS or another state's Medicaid agency, under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., excluding a state program for distribution of pediatric vaccines under 42 U.S.C. 1396s;
  - e. Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or Tricare, the medical and dental care programs for members of the armed forces, certain former members, and their dependents under 10 U.S.C. 1071 et seq. and 32 CFR 199;
  - f. A medical care program of the Indian Health Service or of a tribal organization;
  - g. The Federal Employees Health Benefits Program for U.S. government employees, certain former employees, and their family members under 5 U.S.C. 8901 et seq. and 5 CFR 890 and 891;
  - h. Peace Corps plans under Section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e), including:
    - i. Medical and dental care for Peace Corps applicants, Peace Corps volunteers, and minor children living with Peace Corps volunteers under 32 CFR 728.59;
    - ii. Form PC-127C authorization for payment for evaluation of the Peace Corps related conditions of former Peace Corps volunteers;
    - iii. Treatment of the Peace Corps related conditions of former Peace Corps volunteers under 32 CFR 728.53; and
    - iv. CorpsCare coverage for the non-Peace Corps related conditions of former Peace Corps volunteers and their dependents.
  - i. A state health benefits risk pool;
  - j. An individual policy or contract issued by:
    - i. An insurer for medical expenses, including a preferred provider arrangement;
    - ii. A health care services organization under A.R.S. Title 20, Chapter 4, Article 9 or a health maintenance organization as defined in Section 2792(b)(3) of the Public Health Service Act, 42 U.S.C. 300gg-91(b)(3); or
    - iii. A nonprofit hospital, medical, dental, or optometric service corporation as defined in A.R.S. § 20-822, including Blue Cross Blue Shield of Arizona, or organized under the laws of another state;
  - k. An individual policy or contract made available through the Healthcare Group of Arizona administered by AHCCCS under A.R.S. §§ 36-2912, 36-2912.01, and 36-2912.02;
  - l. A health insurance plan of a state or of a political subdivision as defined in A.R.S. § 35-511 or determined under the laws of another state;
  - m. A policy or contract issued to a member of a bona fide association as defined in section 2791(d)(3) of the Public Health Service Act, 42 U.S.C. 300gg-91(d)(3); or
  - n. KidsCare or another state's children's health insurance program under Title XXI of the Social Security Act, 42 U.S.C. 1397aa et seq.
44. "Variable income" means income in a dollar amount that changes from payment to payment.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

**R9-1-502. Family Member Determination**

A provider shall determine the family members of an uninsured individual seeking medical services.

- 1. A family with one member consists of:
  - a. A non-pregnant child who does not live with:
    - i. A parent;
    - ii. A spouse;
    - iii. An individual with whom the child has a common biological or adopted child;
    - iv. A biological or adopted child; or
    - v. A biological or adopted child of an individual with whom the child has a common biological or adopted child; or
  - b. A non-pregnant individual who is at least age 19 who does not live with:
    - i. A spouse;
    - ii. An individual with whom the individual who is at least age 19 has a common biological or adopted child;
    - iii. A biological or adopted child; or
    - iv. A biological or adopted child of an individual with whom the individual who is at least age 19 has a common biological or adopted child.
- 2. A family with two or more members consists of:
  - a. An individual and:
    - i. The biological or adopted children who live with the individual; and
    - ii. If the individual or a child under subsection (2)(a)(i) is pregnant, each fetus;
  - b. Two individuals, who have a common biological or adopted child and who live together, and:
    - i. The common biological or adopted children living with the two individuals;
    - ii. The biological or adopted children of either individual living with the two individuals; and
    - iii. If an individual or a child under subsection (2)(b)(i) or subsection (2)(b)(ii) is pregnant, each fetus; or
  - c. Two individuals, who are married to each other, who live together, and who do not have a common biological or adopted child, and:
    - i. The biological or adopted children of either individual living with the two individuals; and
    - ii. If an individual or a child under subsection (2)(c)(i) is pregnant, each fetus.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

**R9-1-503. Family Income Determination**

A. A provider shall establish flat fees or fee percentages for medical services rendered to uninsured individuals with family

incomes, including earned and unearned income, equal to or less than 200 percent of the current federal poverty guidelines.

- B.** A provider shall determine an uninsured individual's family income by:
1. Multiplying a weekly payment received by a family member, before deductions, by 52;
  2. Multiplying a biweekly payment received by a family member, before deductions, by 26;
  3. Multiplying a monthly payment received by a family member, before deductions, by 12;
  4. For variable income received by a family member:
    - a. Adding at least four payments, before deductions;
    - b. Dividing the sum obtained in subsection (B)(4)(a) by the number of payments included; and
    - c. Multiplying the quotient obtained in subsection (B)(4)(b) by 52, 26, or 12 as applicable;
  5. Counting the actual payments received by a family member, before deductions, for:
    - a. Interrupted income,
    - b. New income, and
    - c. Terminated income; and
  6. Adding the dollar amounts calculated under subsections (B)(1) through (B)(5).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

#### **R9-1-504. Sliding Fee Schedule Submission and Contents**

- A.** By April 1 of each year, a provider shall submit to the Department the provider's sliding fee schedule, including:
1. A sliding fee schedule with fee percentages,
  2. A sliding fee schedule with flat fees, or
  3. A sliding fee schedule with fee percentages and a sliding fee schedule with flat fees.
- B.** A sliding fee schedule with fee percentages shall contain:
1. A statement that the sliding fee schedule applies to charges for all medical services provided to uninsured individuals by or through the provider;
  2. The current federal poverty guidelines;
  3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a 100 percent reduction; and
  4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three fee percentage levels that increase as family income increases.
- C.** A sliding fee schedule with flat fees shall contain:
1. The requirements listed in subsections (B)(1) and (B)(2);
  2. The flat fee for each medical service or group of medical services;
  3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a \$0 flat fee for each medical service or group of medical services included under subsection (C)(2); and
  4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three flat fee levels that increase as family income increases for each medical service or group of medical services included under subsection (C)(2).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

#### **R9-1-505. Sliding Fee Schedule Approval Time-frames**

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for a request for sliding fee schedule approval is 32 days.
1. A provider and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  2. An extension of the substantive review time-frame and the overall time-frame shall not exceed eight days.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a request for sliding fee schedule approval is 11 days, beginning on the day the Department receives the request.
1. Except as provided in subsections (B)(3) and (B)(4), the Department shall mail to a provider a written notice of administrative completeness when the provider's request for sliding fee schedule approval is complete.
  2. If a request for sliding fee schedule approval is incomplete, the Department shall mail to the provider a written notice of administrative deficiencies that:
    - a. Lists the missing documents or incomplete information, and
    - b. Suspends the administrative completeness review time-frame and the overall time-frame from the date on the notice of administrative deficiencies:
      - i. Until the date the Department receives a complete request for sliding fee schedule approval; or
      - ii. For 60 days, whichever comes first.
  3. If the Department does not receive all the additional documents or information required under subsection (B)(1) within 60 days after the date on the notice of administrative deficiencies, the Department deems the request for sliding fee schedule approval withdrawn.
  4. If the Department approves a sliding fee schedule during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) for a request for sliding fee schedule approval is 21 days, beginning on the date on the Department's notice of administrative completeness under subsection (B)(1).
1. The Department shall mail to a provider a written notice granting or denying approval according to A.R.S. § 41-1076 by the last day of the substantive review time-frame and the overall time-frame.
  2. If the Department issues to a provider a written request for additional information according to A.R.S. § 41-1075(A), the request for additional information suspends the substantive review time-frame and the overall time-frame from the date on the request for additional information:
    - a. Until the date the Department receives all the information requested; or
    - b. For 60 days, whichever comes first.
  3. If the Department does not receive all the information requested under subsection (C)(2) within 60 days after the postmark date of the request for additional information, the Department shall deny sliding fee schedule approval.
- D.** If a time-frame's last day falls on a Saturday, Sunday, or state service holiday listed in A.A.C. R2-5-402, the Department considers the next business day the time-frame's last day.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

**R9-1-506. Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule**

- A.** A provider:
1. Shall not charge an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines the fee determined according to subsection (C) or subsection (D), and
  2. May charge an individual described in subsection (A)(1) only the single administrative fee determined according to subsection (E).
- B.** A provider may charge an uninsured individual with a family income more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines the fee determined according to subsection (C), subsection (D), or subsection (E).
- C.** If a provider uses a sliding fee schedule with fee percentages, an uninsured individual's fee for medical services shall not exceed the dollar amount calculated by applying the fee percentage for the individual's family income to the lowest contracted charge for each medical service provided.
- D.** If a provider uses a sliding fee schedule with flat fees, an uninsured individual's fee for medical services shall not exceed the lowest contracted charge for each medical service provided.
- E.** A provider may:
1. Establish a single administrative fee that does not exceed \$25; and
  2. Charge the administrative fee to:
    - a. Uninsured individuals with a family income equal to or less than 100 percent of the current federal poverty guidelines; and
    - b. Uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines only in lieu of the fee calculated under subsection (C) or subsection (D).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3990, effective December 4, 2006 (Supp. 06-4).

## Statutory Authority

### **36-104. Powers and duties**

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.
23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall

prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

**36-105. Information; state-federal cooperation**

Subject to the laws and departmental rules and regulations on the confidentiality of information promulgated pursuant thereto, and upon request, the department shall furnish information to any agency of the United States which is charged with the administration of health services.

**36-107. Power to promulgate rules concerning confidential nature of records**

The director shall promulgate such rules and regulations as are required by state law or federal law or regulation to protect confidential information. No names or other information of any applicant, claimant, recipient or employer shall be made available for any political, commercial or other unofficial purpose.

**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.

### **36-351. Duties of the director; Arizona state library, archives and public records**

A. The director shall provide safe, secure and permanent preservation of vital records. The director shall comply with preservation requirements, including the resolution necessary for authentic reproduction, established by the Arizona state library, archives and public records pursuant to section 39-101.

B. The director shall submit to the Arizona state library, archives and public records for permanent preservation, a copy of a person's:

1. Registered birth certificate seventy-five years after the person's birth.

2. Registered death certificate fifty years after the person's death.

C. Pursuant to section 41-151.09, subsection D, the Arizona state library, archives and public records shall provide access to registered birth certificates and registered death certificates submitted pursuant to subsection B of this section.

D. Each calendar year, the director shall reproduce on permanent media established by the Arizona state library, archives and public records pursuant to section 39-101, vital records registered for the calendar year including an index. The director shall submit the vital records and index to the Arizona state library, archives and public records, which shall provide for the confidential safekeeping of the vital records and index.

E. The director of the Arizona state library, archives and public records is entitled to receive records, including sealed records, within one hundred and twenty days on receipt or creation by the

department. These electronic records shall be used only for archival or preservation purposes and may not be released or copied for other purposes.

**41-1002. Applicability and relation to other law; preapplication authorization; definitions**

A. This article and articles 2 through 5 of this chapter apply to all agencies and all proceedings not expressly exempted.

B. This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.

C. An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred on other persons by any provision of law are not substantially prejudiced.

D. Unless specifically authorized by statute, an agency shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the extent practicable.

E. Unless specifically authorized by statute, an agency may not require preapplication authorization or require preapplication conferences as a requirement to filing an application that is otherwise allowed by statute. If preapplication procedures are required by statute, an agency shall consider the preapplication requirements or procedures as the beginning of the licensing time frame for the purposes of article 7.1 of this chapter. An agency may offer voluntary preapplication procedures without specific statutory authority if the agency communicates to an applicant that the preapplication procedures are not mandatory. If preapplication procedures are offered by an agency, the agency shall consider the costs and delays that may be imposed on an applicant and shall seek to minimize those impacts.

F. Unless authorized by federal or state law, an agency may not take any action that materially increases the regulatory burdens on a business unless there is a threat to the health, safety and welfare of the public that has not been addressed by legislation or industry regulation within the proposed regulated field.

G. Unless authorized by federal or state law, an agency may not apply a regulation to a qualified marketplace platform if the purpose of that regulation is to regulate a business that provides goods or services directly to the customer.

H. For the purposes of this section:

1. "Qualified marketplace contractor" means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide goods or services to third-party individuals or entities seeking those services.

2. "Qualified marketplace platform" means an organization, including a corporation, limited liability company, partnership, sole proprietor or any other entity, that operates a digital platform that facilitates the provision of goods or services by qualified marketplace contractors to third-party individuals or entities seeking those goods or services.

#### **41-1003. Required rule making**

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

#### **41-1029. Agency rule making record**

A. An agency shall maintain an official rule making record for each rule it proposes by publication in the register of a notice of proposed rule making and each final rule filed in the office of the secretary of state. The record and matter incorporated by reference must be available for public inspection.

B. The agency rule making record shall contain all of the following:

1. A copy of the notice initially filed in the office of the secretary of state.
2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.
3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.
4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.
5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations.
6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.
7. A copy of the final rule and preamble.
8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on section 41-1024, subsection D in the making of a rule and a request is made.

C. On judicial review, the record required by this section constitutes the official agency rule making record with respect to a rule. Except as provided in section 41-1036 or otherwise required by a provision of law, the agency rule making record need not constitute the exclusive basis for agency action on that rule or for judicial review of that rule.

#### **41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice**

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for denial to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If 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.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council 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 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement or rule shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of subsection G of this section, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.

K. A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.

L. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

M. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

#### **41-1092.08. Final administrative decisions; review; exception**

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on the agency. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's

decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

#### **41-1092.09. Rehearing or review**

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

**D-2**

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 5, Articles 1 and 5, Department of Health Services - Child Care Facilities

**Amend:** R9-5-101, R9-5-502, R9-5-516



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 5, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 5, Article 1, General, and Article 5, Facility Program and Equipment

**Amend:** R9-5-101, R9-5-502, R9-5-516

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### **Summary:**

This regular rulemaking from the Department of Health Services (Department) relates to three rules in Title 9, Chapter 5, Article 1 and Article 5, regarding child care facilities. Pursuant to A.R.S. § 15-341(A)(34) and (35), child care facilities located on public school premises are required to allow school-aged children to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices. Pursuant to A.R.S. § 36-2229(B), child care facilities that are authorized entities are permitted to acquire, stock, and administer or provide an inhaler to an individual experiencing respiratory distress. The Department intends to amend the rules to make them consistent with these statutes.

In addition, the Department states that in 2018 and 2017, it completed complaint investigations related to infant deaths at child care facilities. As a result, the Department plans to amend the policies and procedures requirements in R9-5-502 for "non-crawling infants" to clarify a staff member's supervision of, and interaction with, a non-crawling infant. The Department states that amending the rules will eliminate confusion and ensure the health and safety for enrolled children attending a child care facility.

The Department received an exemption from the rulemaking moratorium to conduct this rulemaking on April 22, 2019.

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

Yes. The Department cites both general and specific statutory authority for these rules.

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

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

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

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

4. **Summary of the agency's economic impact analysis:**

The Department's changes to the rules include clarifying the supplemental standards for infants' policies and procedures related to supervising non-crawling infants and "tummy time" as an infant activity, clarifying an exception that allows a facility to acquire, store, and administer or provide an inhaler to an individual experiencing respiratory distress, and adding a requirement that enrolled school-aged children may possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices.

Currently, the Department licenses 2,503 child care facilities in Arizona, which have a combined licensed capacity of over 252,178 children. In FY 2019, the Department conducted 201 initial inspections and 2,521 compliance inspections.

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

The Department states that the changes made through this rulemaking will improve the effectiveness and efficiency of the rules by making the rules consistent with current laws and clarifying policies and procedures that increase the health and safety of non-crawling infants.

While the Department anticipates that child care facilities may incur a minimal one-time cost for updating policies and procedures related to supervising non-crawling infants, the Department believes that the significant benefits of better protecting the health and safety of infants and children in child care facilities outweigh any potential costs.

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

The Department identifies affected persons as the Department, child care facilities, children enrolled in child care facilities and their parents, and the general public.

The Department expects that the proposed rules will provide a significant benefit to the Department for having rules that will better protect the health and safety of infants and students enrolled in child care facilities. The Department expects that the cost for technical resources to amend the rules to be minimal to moderate (under \$10,000).

The Department anticipates that child care facilities may incur a minimal one-time cost for updating policies and procedures related to supervising non-crawling infants. The Department also expects that adding a requirement to allow school-aged children to possess emergency medications will not cause child care facilities to incur any additional cost and rather, may provide a significant benefit for staff who will no longer be held responsible for a child not receiving medication when needed the most.

The Department anticipates that children enrolled in child care facilities and their parents should not incur any additional costs and rather should receive additional benefits from requirements that better clarify the needs of infants who receive tummy-time and the needs of other enrolled children who require inhalers and other emergency medications. It is possible that parents of an enrolled infant who requires tummy-time for ensuring proper physical development could see an increase in child care fees if their child care facility chooses to add additional staff to care for those infants. However, the Department expects child care facilities will not hire additional staff.

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

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

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

The Department did not receive any comments in conducting this rulemaking.

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

The Department states that pursuant to A.R.S. § 36-882 (License; posting; transfer prohibited; fees; provisional license; renewal; exemption from rule making), the Department is required to provide licensure for child care facilities and pursuant to A.R.S. § 36-888 (Denial, revocation or suspension of license), the Department retains the authority to deny, revoke, or suspend an applicant or a child care facility licensee's ability

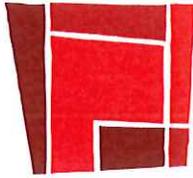
to operate. Therefore, the Department does not issue general permits pursuant to A.R.S. § 41-1037. Upon review of the applicable statutes, Council staff agrees with the Department and finds that the Department is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(2).

**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. There is no corresponding federal law.

**11. Conclusion**

In this regular rulemaking, the Department seeks to amend three rules relating to child care facilities in order to conform the rules to applicable statutes as well as respond to complaint investigations. The Department is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(4) and (5). Upon review of the applicable statutes, Council staff finds that the Department demonstrates an adequate basis for an immediate effective date. Council staff recommends approval of this rulemaking with an immediate effective date.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

April 20, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 5, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: April 13, 2020
2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 5 does not relate to a five-year-review report.
3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:  
The rulemaking does not establish a new fee.
4. Whether the rulemaking contains a fee increase:  
The rulemaking does not contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:  
The Department is requesting an immediate effective date for the rules.

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

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

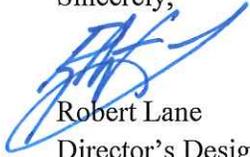
The following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and

3. General and specific statutes authorizing the rules, including relevant statutory definitions.

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL:tk

Enclosures

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

**NOTICE OF FINAL RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 5. DEPARTMENT OF HEALTH SERVICES – CHILD CARE FACILITIES**

**PREAMBLE**

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

R9-5-101	Amend
R9-5-502	Amend
R9-5-516	Amend
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-882 through 36-894.01
- 3. The effective date of the rules:**

The Arizona Department of Health Services (Department) requests an immediate effective date for the new rules under A.R.S. § 41-1032 (A)(4) and (5). By prescribing measures necessary to ensure the safety of infants and children enrolled in a child care facility, licensed pursuant to 9 A.A.C. 5, the rules are less burdensome by being more effective and increase benefits for enrolled infants, enrolled children, parents, child care facilities, and the Department. The rules have no public impact on public health and safety; and do not affect public involvement or public participation process.
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 25 A.A.R. 1561, June 21, 2019

Notice of Proposed Rulemaking: 26 A.A.R. 401, March 13, 2020
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name: Thomas Salow, Branch Chief

Address: Arizona Department of Health Services  
Public Health Licensing Services  
150 N. 18th Ave., Suite 400  
Phoenix, AZ 85007-3248

Telephone: (602) 364-1935

Fax: (602) 334-3808

E-mail: [Thomas.Salow@azdhs.gov](mailto:Thomas.Salow@azdhs.gov)

or

Name: Stephanie Elzenga, Administrative Counsel

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

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: [Stephanie.Elzenga@azdhs.gov](mailto:Stephanie.Elzenga@azdhs.gov)

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

The Department licenses child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and has adopted rules for child care facilities in 9 A.A.C. 5. A.R.S. § 15-341(A)(34) and (35) requires child care facilities located on a public school premises to allow school-aged children to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices. A.R.S. § 36-2229(B) allows child care facilities, that are an authorized entity, to acquire, stock, and administer or provide an inhaler to an individual experiencing respiratory distress. The Department plans to amend A.A.C. R9-5-516 to address matters identified in A.R.S. §§ 15-341 and 36-2229. Additionally, in 2018 and 2017, the Department completed complaint investigations related to infant deaths at child care facilities. Because of these deaths, the Department plans to amend the policies and procedures requirements in A.A.C. R9-5-502 “for non-crawling infants” to clarify a staff member’s supervision of and interaction with a non-crawling infant. The Department believes amending the rules will eliminate confusion and ensure the health and safety for enrolled children attending a child care facility.

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

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

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

Not applicable

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

As used in the 2020 Economic, Small Business, and Consumer Impact Statement for this rulemaking, the annual costs and revenues associated are designated as minimal when 1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. A cost listed as significant when meaningful or important, but not readily subject to quantification. The Department identifies affected persons as the Department, child care facilities, children enrolled in a child care facilities and their parents, and the public. The changes made to the rules include clarifying the supplemental standards for infants' policies and procedures related to supervising non-crawling infants and "tummy time" as an infant activity; clarifying an exception in A.R.S. § 36-2229(D) that allows a facility to acquire, store, and administer or provide an inhaler to an individual experiencing respiratory distress; and adding a requirement that enrolled school-aged children may possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices according to A.R.S. § 15-341. The Department expects that the proposed changes will provide a significant benefit to the Department for having rules that will better protect the health and safety of infants and students enrolled in child care facilities. The Department expects that the cost for technical resources to amend the rules to be minimal to moderate. For child care facilities, the Department anticipates that child care facilities may incur a minimal one-time cost for updating policies and procedures related to supervising non-crawling infants. The Department also expects that adding a requirement to allow school-aged children to possess emergency medications will not cause child care facilities to incur any additional cost and rather, may provide a significant benefit for staff who will no longer be held responsible for a child not receiving medication when needed the most. Lastly, the Department anticipates that children enrolled in child care facilities and their parents should not incur any additional costs and rather should receive additional benefits from requirements that better clarify the needs of infants who receive tummy-time and the needs of other enrolled children who require inhalers and other emergency medications. Although, it is possible that parents, of an enrolled infant who requires tummy-time for ensuring proper physical development, could see an increase in child care fees if their child care facility chooses to add additional staff to care for those infants. However, the Department expects child care facilities will not hire additional staff. Overall, the Department believes that the benefits of having the amended rules outweigh any potential costs associated with the rulemaking.

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

The Department did not make any changes between the proposed rulemaking and the final

rulemaking.

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

During the formal 30-day public comment period, the Department did not receive any comments.

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

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

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

The Department pursuant to A.R.S. § 36-882 is required to provide licensure for child care facilities and pursuant to A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care facility licensee's ability to operate.

The Department does not use a general permit for child care facilities.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

**13. Incorporated by reference and their location in the rules:**

Not applicable

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

The rule was not previously made as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 3. DEPARTMENT OF HEALTH SERVICES – CHILD CARE FACILITIES**

*Sections*

- R9-5-101. Definitions
- R9-5-502. Supplemental Standards for Infants
- R9-5-516. Medications

## ARTICLE 1. GENERAL

### **R9-5-101. Definitions**

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. “Abuse” has the same meaning as in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
  - a. Causes injury to an enrolled child,
  - b. Requires attention from a staff member, and
  - c. May or may not be an emergency.
3. “Accommodation school” has the same meaning as in A.R.S. § 15-101.
4. “Accredited” means approved by the:
  - a. New England Commission of Institution of Higher Education,
  - b. Middle States Commission of Higher Education,
  - c. North Central the Higher Learning Commission,
  - d. Northwest Commission on Colleges and Universities,
  - e. Commission on Colleges, or
  - f. Western Association of Schools and Colleges.
5. “Activity” means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. “Activity area” means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
8. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.
9. “Adult” means an individual who is at least 18 years of age.
10. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
11. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. “Applicant” means a person or governmental agency requesting one of the following:
  - a. A license, or
  - b. Approval of a change affecting a license under R9-5-208.
13. “Application” means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.

14. “Assistant teacher-caregiver” means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. “Association” means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. “Beverage” means a liquid for drinking, including water.
17. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
18. “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, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
19. “Calendar week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
20. “C.C.P.” means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.
21. “C.D.A.” means Child Development Associate, a credential awarded by the Council for Professional Recognition.
22. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
23. “Charter school” has the same meaning as in A.R.S. § 15-101.
24. “Child care experience” means an individual’s documented work with children in:
  - a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
  - b. A public school, a charter school, a private school, or an accommodation school;
  - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
  - d. One of the following professional fields:
    - i. Nursing,
    - ii. Social work,
    - iii. Psychology,
    - iv. Child development, or
    - v. A closely-related field.

25. “Child care services” means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
26. “Child with special needs” means:
  - a. A child with a health care provider’s diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
  - b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
  - c. A “child with a disability” as defined in A.R.S. § 15-761.
27. “Clean” means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
28. “Closely-related field” means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
29. “Communicable disease” has the same meaning as in A.A.C. R9-6-101.
30. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
31. “Corporal punishment” means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
32. “CPR” means cardiopulmonary resuscitation.
33. “Credit hour” means an academic unit earned at an accredited college or university:
  - a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
  - b. Completing practical work for a course as determined by the accredited college or university.
34. “Designated agent” means an individual who meets the requirements in A.R.S. § 36-889(D).
35. “Developmentally-appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
36. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
37. “Documentation” means information in written, photographic, electronic, or other permanent form.
38. “Electronic signature” has the same meaning as in A.R.S. § 41-351(9).

39. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
40. “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
41. “Enrolled” means placed by a parent and accepted by a licensee for child care services.
42. “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
43. “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.
44. “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
45. “Facility premises” means property that is:
  - a. Designated on an application for a license by the applicant; and
  - b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
46. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
47. “Field trip” means an activity planned by a staff member for an enrolled child:
  - a. At a location or area that is not licensed for child care services by the Department, or
  - b. At a child care facility in which the child is not enrolled.
48. “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.
49. “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
50. “Food preparation” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
51. “Full-day care” means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
52. “Governmental agency” has the same meaning as in A.R.S. § 44-7002.
53. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.

54. “Hazard” means a source of endangerment.
55. “Health care provider” means a physician, physician assistant, or registered nurse practitioner.
56. “High school equivalency diploma” means:
- a. A document issued by the State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
  - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
  - c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
57. “Hours of operation” means the specific time during a day for which a licensee is licensed to provide child care services.
58. “Illness” means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
59. “Immediate” or “immediately” means without restriction, delay, or hesitation.
60. “Inaccessible” means:
- a. Out of an enrolled child’s reach, or
  - b. Locked.
61. “Infant” means:
- a. A child 12 months of age or younger, or
  - b. A child 18 months of age or younger who is not yet walking.
62. “Infant care” means child care services provided to an infant.
63. “Infestation” means the presence of lice, pinworms, scabies, or other parasites.
64. “Inspection” means:
- a. Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
  - b. Review of facility documents, records, or reports by the Department; or
  - c. Examination of a facility by a local governmental agency.
65. “Lesson plan” means a written description of the activities scheduled in each activity area for a day.

66. “License” means the written authorization issued by the Department to operate a facility in Arizona.
67. “Licensed applicator” who complies with A.A.C. R3-8-201(C).
68. “Licensed capacity” means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
69. “Licensee” means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
70. “Local” means under the jurisdiction of a city or county in Arizona.
71. “Mat” means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child’s body.
72. “Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
73. “Menu” means:
  - a. A written description of the food that a facility provides and serves as a meal or snack, or
  - b. The combination of food that a facility provides and serves as a meal or snack.
74. “Motor vehicle” has the same meaning as in A.R.S. § 28-101.
75. “N.A.C.” means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.
76. “Name” means, for an individual, the individual’s first name and the individual’s last name.
77. “Naptime” means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.
78. “Neglect” has the same meaning as in A.R.S. § 8-201.
79. “One-year-old” means a child who is not an infant and at least 12 months of age but not yet two years of age.
80. “Outbreak” has the same meaning as in A.A.C. R9-6-101.
81. “Overall time-frame” has the same meaning as in A.R.S. § 41-1072.
82. “Parent” means:
  - a. A natural or adoptive mother or father,
  - b. A legal guardian appointed by a court of competent jurisdiction, or
  - c. A “custodian” as defined in A.R.S. § 8-201.
83. “Part-day care” means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.

84. “Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.
85. “Pesticide” has the same meaning as in A.R.S. § 32-3601.
86. “Pesticide label” means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
87. “Physical injury” means temporary or permanent damage or impairment to a child’s body.
88. “Physical plant” means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
89. “Physician” means an individual licensed as a doctor of:
  - a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
  - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
  - e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
90. “Physician assistant” means:
  - a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
  - b. An individual who is licensed as a physician assistant under the law of another state.
91. “Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R18-5-201.
92. “Private school” has the same meaning as in A.R.S. § 15-101.
93. “Program” means a variety of activities organized and conducted by a staff member.
94. “Public pool” has the same meaning as “public swimming pool” in A.A.C. R18-5-201.
95. “Public school” has the same meaning as “school” in A.R.S. § 15-101.
96. “Registered nurse practitioner” means:
  - a. An individual who is licensed and certified as a “registered nurse practitioner” under A.R.S. § 32-1601, or
  - b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
97. “Regular basis” means at recurring, fixed, or uniform intervals.
98. “Responsible party” means an individual or a group of individuals who:
  - a. Is assigned by a public school, charter school, or governmental agency; and
  - b. Has general oversight of the child care facility.

99. “Sanitize” means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
100. “School-age child” means a child who:
- a. Meets one of the following:
    - i. Is five years old on or before January 1 of the current school year, or
    - ii. Is five years old on or before January 1 of the most recent school year; and
  - b. Meets one of the following:
    - i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
    - ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
    - iii. Is home-schooled at a kindergarten or higher level during the current school year; or
    - iv. Was home-schooled at a kindergarten or higher level during the most recent school year.
101. “School-age child care” means child care services provided to a school-age child.
102. “School campus” means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
103. “School governing board” has the same meaning as “governing board” in A.R.S. § 15-101.
104. “Screen time” means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.
105. “Semi-public pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.
106. “Service classification” means one of the following:
- a. Full-day care;
  - b. Part-day care;
  - c. Evening and nighttime care;
  - d. Infant care;
  - e. One-year-old child care;
  - f. Two-year-old child care;
  - g. Three-year-old, four-year-old, and five-year-old child care;
  - h. School-age child care; or
  - i. Weekend care.

107. “Signatory” means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.
108. “Signed” means affixed with an individual’s signature or with a symbol representing an individual’s signature if the individual is unable to write the individual’s name.
109. “Sippy cup” means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
110. “Space utilization” means the designated use of an area within a facility for specific child care services or activities.
111. “Staff” or “staff member” means the same as “child care personnel” as defined in A.R.S. § 36-883.02.
112. “Student-aide” means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.
113. “Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.
114. “Supervision” means:
- a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or
  - b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.
115. “Swimming pool” has the same meaning as in A.A.C. R18-5-201.
116. “Teacher-caregiver” means a staff member responsible for developing, planning, and conducting child care activities.
117. “Teacher-caregiver-aide” means a staff member who provides child care services under the supervision of a teacher-caregiver.
118. “Training” means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.
119. “Tummy time” means a limited period-of-time no more than 20 minutes used to allow a non-crawling infant:
- i. To strengthen the infant’s head, neck, and upper body muscles; and

ii. To increase the infant’s sensory perception, visual and hearing acuity, and social and emotional interaction.

~~119~~.120. “Volunteer” means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.

~~120~~.121. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

## ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

### R9-5-502. Supplemental Standards for Infants

- A. A licensee providing child care services for infants shall:
1. Provide a wall-enclosed room for infants that provides exits required by R9-5-601(1);
  2. Provide age-appropriate active and quiet activities for each infant;
  3. Provide age-appropriate indoor and outdoor activities for each infant;
  4. Permit an infant to maintain the infant's pattern of sleeping and waking;
  5. Develop, document, and implement tummy time policies and procedures that:
    - a. ~~provide~~ Provide an opportunity for a non-crawling infant to spend time experience tummy time each day on the infant's stomach while the infant is awake;
      - i. While the infant is awake, and
      - ii. On the infant's stomach;
    - b. Ensure a staff member who is supervising a non-crawling infant while the infant is flat on their stomach and on the floor:
      - i. Is within reach of the infant;
      - ii. Does not perform any other duties while supervising the infant;
      - iii. Does not allow the use of pillows, comforters, sheepskins, stuffed toys, or other soft products in the same floor space as the infant ~~which are within reach of the infant;~~ and
      - iv. Does not allow any product specified in subsection (A)(5)(b)(iii) to be within reach of the infant;
    - c. Require continuous interaction between a non-crawling infant and the staff member who is supervising the non-crawling infant during tummy time;
    - d. Ensure, as an infant demonstrates ability and strength to control physical movement and greater sensory perception and social interaction, an assigned staff member provide a tummy-time period to:
      - i. A 2 - 3 month old infant of no more than 15 minutes;
      - ii. A 3 - 4 month old infant of no more than 20 minutes; and
      - iii. A 5 - 6 month old infant of 20 minutes; and
    - e. Ensure a non-crawling infant's tummy time period specified in subsection (A)(5)(d):
      - i. Is determined by the assigned staff member's assessment of the infant;

- ii. Is gradually increased as the infant's ability, strength, and perception increases; and
    - iii. Does not exceed tummy time periods specified in subsection (5)(D)(i) through (iii);
  - 6. Provide an outdoor activity area or an indoor activity area for large muscle development substituted for an outdoor activity area that is used by infants when enrolled children older than infants are not present;
  - 7. Provide space, materials, and equipment in an infant room that includes the following:
    - a. An area with nonabrasive flooring for sitting, crawling, and playing;
    - b. Toys, materials, and equipment, that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the infants in attendance that include:
      - i. Toys to enhance physical development such as toys for stacking, pulling, and grasping;
      - ii. Soft toys;
      - iii. Books;
      - iv. Toys to enhance visual development such as crib mobiles and activity mats with an object or objects suspended above the infant's head; and
      - v. Unbreakable mirrors; and
    - c. At least one adult-size chair for use by a:
      - i. Staff member when holding or feeding an infant, or
      - ii. Nursing mother when breastfeeding her infant;
  - 8. Provide a crib for each infant that:
    - a. Has bars or openings spaced no more than 2 3/8 inches apart and a crib mattress measured to fit not more than 1/2 inch from the crib side;
    - b. Has a commercially waterproofed mattress; and
    - c. Is furnished with clean, sanitized, crib-size bedding, including a fitted sheet and top sheet or a blanket;
  - 9. Prohibit the use of stacked cribs;
  - 10. Ensure that an occupied crib with a crib side that does not have a non-porous barrier is placed at least 2 feet from another occupied crib side that does not have a non-porous barrier; and
  - 11. Label each food container received from the parent with the infant's name.
- B.** A licensee providing child care services for infants shall not:

1. Allow an infant room to be used as a passageway to another area of the facility;
2. Permit an infant who is awake to remain for more than 30 consecutive minutes in a crib, swing, feeding chair, infant seat, or any equipment that confines movement;
3. Permit an infant to use a walker; or
4. Allow screen time in an infant room.

C. A licensee shall ensure that:

1. A staff member providing child care services in an infant room:
  - a. Plays and talks with each infant;
  - b. Holds and rocks each infant;
  - c. Responds immediately to each infant's distress signals;
  - d. Keeps dated, daily, documentation of each infant including:
    - i. A description of any activities the infant participated in,
    - ii. The infant's food consumption, ~~and~~
    - iii. Diaper changes; and
    - iv. Tummy time;
  - e. Maintains the documentation in subsection (C)(1)(d) on facility premises for 12 months after the date on the documentation;
  - f. Provides a copy of the documentation in subsection (C)(1)(d) to the infant's parent upon request;
  - g. Does not allow bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products in a crib when an infant is in the crib;
  - h. Cleans and sanitizes each crib and mattress used by an infant when soiled;
  - i. Changes each crib sheet and blanket before use by another infant, when soiled, or at least once every 24 hours;
  - j. Cleans and sanitizes all sheets and blankets before use by another infant;
  - k. Places an infant to sleep on the infant's back, unless the infant's parent submits written instructions from the infant's health care provider that states otherwise;
  - l. Obtains written, current, and dated dietary instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility;
  - m. Posts the current written dietary instructions in the infant room and the kitchen and maintains the instructions on facility premises for 12 months after the date of the instructions; and

- n. Follows the current written dietary instructions of a parent when feeding the infant;
2. A staff member providing child care services in an infant room does not:
- a. Place an infant directly on a waterproof mattress cover; or
  - b. Place an infant to sleep using a positioning device that restricts movement, unless the infant's health care provider has instructed otherwise in writing;
3. When preparing, using, or caring for an infant's feeding bottles, a staff member:
- a. Labels each bottle received from the parent with the infant's name;
  - b. Ensures that a bottle is not:
    - i. Heated in a microwave oven;
    - ii. Propped for an infant feeding; or
    - iii. Permitted in an infant's crib unless the written instructions required by subsection (C)(1)(l) state otherwise;
  - c. Empties and rinses bottles previously used by an infant; and
  - d. Cleans and sanitizes a bottle, bottle cover, and nipple before reuse; and
4. When feeding an infant, a staff member:
- a. Provides an infant with food for growth and development that includes:
    - i. Formula provided by the infant's parent or the licensee or breast milk provided by the infant's parent, following written instructions required by subsection (C)(1)(l); and
    - ii. Cereal as requested by the infant's parent or health care provider;
  - b. If the staff member prepares an infant's formula, prepares the infant's formula in a sanitary manner;
  - c. Stores formula and breast milk in a sanitary manner at the facility;
  - d. Does not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless the written instructions required by subsection (C)(1)(l) state otherwise;
  - e. Except for finger food, feeds solid food to an infant by spoon from an individual container;
  - f. Uses a separate container and spoon for each infant;
  - g. Holds and feeds an infant under 6 months of age and an infant older than 6 months of age who cannot hold a bottle for feeding; and

- h. If an infant is no longer being held for feeding, seats the infant in a feeding chair or at a table with a chair that allows the infant to reach the food while sitting.

**R9-5-516. Medications**

**A.** A licensee shall ensure that a written statement is prepared and maintained on facility premises that specifies:

- 1. Whether prescription or nonprescription medications are administered to enrolled children; and
- 2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.

**B.** If prescription or nonprescription medications are administered, a licensee shall ensure that:

- 1. A facility director, or a staff member designated in writing by the facility director, is responsible for the administration of all medications in the facility, including storing, supervising an enrolled child's ingestion of a medication, and documenting all medications administered to an enrolled child;
- 2. A facility director ensures that only one staff member in the facility at any given time is responsible for the administration of medications;
- 3. A facility director, or a staff member designated in writing by the facility director, does not administer a medication to an enrolled child unless the facility receives written authorization signed by the enrolled child's parent or health care provider that includes the:
  - a. Name of the enrolled child;
  - b. Type of the medication;
  - c. Prescription number, if any;
  - d. Instructions for administration specifying the:
    - i. Dosage and route of administration;
    - ii. If indicated, starting and ending dates of the dosage period; and
    - iii. Times and frequency of administration;
  - e. Reason for the medication; and
  - f. Date of authorization; and
- 4. A staff member:
  - a. Administers a prescription medication provided by a parent only from a container dispensed by a pharmacy;

- b. Administers a nonprescription medication provided by a parent for an enrolled child only from a container prepackaged and labeled for use by the manufacturer and labeled with the enrolled child's name;
  - c. Does not administer any medication that has been transferred from one container to another; and
  - d. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the facility receives written authorization from the enrolled child's health care provider.
- C. A licensee shall allow an enrolled child to receive an injection only after obtaining a written authorization from a health care provider.
- D. A licensee shall maintain the health care provider's written authorization required in subsection (C) on facility premises for 12 months after the date of the written authorization.
- E. An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).
- F. A licensee shall maintain documentation of all medications administered to an enrolled child.
  - 1. Documentation shall contain:
    - a. The name of the enrolled child;
    - b. The name and amount of medication administered and the prescription number, if any;
    - c. The date and time the medication was administered; and
    - d. The signature of the staff member who administered the medication to the enrolled child; and
  - 2. A licensee shall maintain the documentation on facility premises for 12 months after the date the medication is administered.
- G. A licensee shall return all unused prescription and nonprescription medications to a parent when the medication prescription date has expired or the medication is no longer being administered to the enrolled child or dispose of the medication if unable to locate the enrolled child's parent after the child's disenrollment.
- H. Except as provided in subsection (J), a licensee shall ensure that prescription and nonprescription medications are stored as follows:

1. An enrolled child's medication is kept in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medications and is located out of reach of children;
  2. Medication for a staff member is kept in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications and is located out of reach of children; and
  3. Medications requiring refrigeration are kept in a locked, leak-proof container in a refrigerator.
- I.** Except as specified in A.R.S. § 36-2229(B) through (D), a licensee shall ensure that a facility does not stock a supply of medications for administration to enrolled children, including:
1. Any prescription medication; or
  2. A nonprescription medication such as aspirin, acetaminophen, ibuprofen, or cough syrup.
- J.** A staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms:
1. May be kept in the activity area where the staff member or enrolled child is present; and
  2. Except when the prescription medication is administered to treat life-threatening symptoms, is inaccessible to an enrolled child.
- K.** A licensee of a licensed child care facility owned and located on a public school premises shall ensure that enrolled school-aged children are allowed to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices according to A.R.S. § 15-341, if an enrolled school-aged child:
1. Has a written prescription from a physician,
  2. Is named on the prescription label, and
  3. Has written documentation from the enrolled school-aged child's parent approving the enrolled school-aged child to possess and self-administer emergency medication.

**TITLE 9. HEALTH SERVICES**

**CHAPTER 5 . DEPARTMENT OF HEALTH SERVICES –**

**CHILD CARE FACILITIES**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**2020**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 5. DEPARTMENT OF HEALTH SERVICES – CHILD CARE FACILITIES**

**1. An identification of the rulemaking:**

The purpose of this rulemaking is to update and amend the licensing requirements for child care facilities licensed under A.R.S. Title 36, Chapter 7.1, Article 1. A.R.S. § 36-883 requires the Arizona Department of Health Services (Department) to adopt reasonable rules necessary to ensure the health, safety, and well-being of children being cared for in a child care facility. The Department has implemented A.R.S. § 36-883 by promulgating Arizona Administrative Code Title 9, Chapter 5, Articles 1 through 6, which contain definitions and licensing requirements for child care facilities.

In this rulemaking, the Department plans to amend A.A.C. R9-5-516 to make consistent with A.R.S. § 15-341 that allows school-aged children to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices; and A.R.S. § 36-2229 that allows child care facilities, that are an authorized entity, to acquire, store, and administer or provide an inhaler to an individual experiencing respiratory distress. In addition, due to recent infant deaths that occurred in 2018 and 2017 at licensed child care facilities, and based on the Department’s completed complaint investigations related to infant deaths, the Department plans to amend the policies and procedures requirements in A.A.C. R9-5-502 to clarify a staff member’s supervision of and interaction with a non-crawling infant and, in A.A.C. R9-5-101, adds a definition for “tummy time” that specifies a non-crawling infant’s developmental needs and limits period-of-time for providing tummy time. This rulemaking improves the health or safety of enrolled infants and children who attend licensed child care facilities. Changes conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

**2. Identification of the persons, who will be directly affected by, bears the costs of, or directly benefits from the rules:**

- a. The Department
- b. Child care facilities and staff
- c. Infants and children enrolled in a child care facility and parents
- d. General public

**3. Cost/benefit analysis:**

The changes made through this rulemaking will improve the effectiveness and efficiency of the rules by making the rules consistent with current laws and clarifying policies and procedures that increase the health and safety of non-crawling infants. This analysis covers cost and benefit associated with the rule

changes. No new FTEs will be required due to this rulemaking. The annual cost and revenue changes are designated as none-to-minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or more in additional costs or revenues. Costs listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefits	Decreased Cost/ Increased Benefits
<b>A. State and Local Government Agencies</b>			
The Department	Requires technical resources to amend the rules: <ul style="list-style-type: none"> <li>• Adds definition “tummy time”</li> <li>• Clarifies the supplemental standards for infants policies and procedures related to supervising non-crawling infants and “tummy time” as an infant activity</li> <li>• Clarifies an exception to A.R.S. § 36-2229(D) that allows a facility to acquire, store, and administer or provide an inhaler to an individual experiencing respiratory distress</li> <li>• Adds requirement that enrolled school-aged children may possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices according to A.R.S. § 15-341</li> </ul>	Moderate None None None None	Significant Significant Significant Significant Significant
<b>B. Privately Owned Businesses</b>			
Child care facilities and staff	Adds definition “tummy time” Clarifies the supplemental standards for infants policies and procedures related to supervising non-crawling infants and “tummy time” as an infant activity Clarifies an exception to A.R.S. § 36-2229(D) that allows a facility to acquire, store, and administer or provide an inhaler to an individual experiencing respiratory distress Adds requirement that enrolled school-aged children may possess emergency medications and self-administer auto-injectable epinephrine	None Minimal Minimal Minimal	Significant Significant Significant Significant

	and handheld inhaler devices according to A.R.S. § 15-341		
<b>C. Private Persons and Consumers</b>			
Infants and children enrolled in a child care facility and parents	Adds definition “tummy time”	None	Significant
	Clarifies the supplemental standards for infants policies and procedures related to supervising non-crawling infants and “tummy time” as an infant activity	None	Significant
	Clarifies an exception in A.R.S. § 36-2229(D) that allows a facility to acquire, store, and administer or provide an inhaler to an individual experiencing respiratory distress	None	Significant
	Adds requirement that enrolled school-aged children may possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices according to A.R.S. § 15-341	None	Significant
General public	Clarifying requirements related to supervision and developmental activities for non-crawling infants	None	Significant
	Updating requirements to make consistent with state laws and allow children who require emergency medications to access the medications when needed.	None	Significant

**The Department**

Currently, the Department licenses 2,503 child care facilities in Arizona, which have a combined licensed capacity of over 252,178 children. In FY 2019, the Department conducted 210 initial inspections and 2,521 compliance inspections. The Department also received 493 complaints, issued 181 initial and 758 renewal licenses, and processed 274 enforcement actions. The Department anticipates that the cost associated with the rulemaking to be moderate for a rule analyst and program staff to amend rules in 9 A.A.C. 5, Article 1 and Article 5, including time to meet with stakeholders to ensure that the Department is aware of stakeholder concerns and when appropriate, make changes to draft rules.

The Department expects to receive a significant benefit for adding the definition “tummy time” and amending child care facilities policies and procedures requirements to clarify that “tummy time” is a required developmental activity for non-crawling infants, consistent with A.R.S. § 36-883(A)(2) and (3). The Department anticipates that

clarifying what tummy time is, how the staff is to be present with the non-crawling infant, and how the staff interacts with a non-crawling infant will improve the effectiveness and understandability for facility owners and staff who are responsible for enrolled non-crawling infants and reduce non-crawling infant deaths. It is the Department's belief that a licensed child care facility shall ensure the health and safety of a non-crawling infant at all time. In addition, having requirements consistent with A.R.S. § 36-2229 and A.R.S. § 15-341 is a significant benefit for the Department whose purpose is to protect the health and safety of Arizonans, specifically enrolled children who should have access to life saving medications when needed and without delay. This rulemaking is more than a benefit to the department; it is the Department's mission to promote, protect, and improve the health and wellness of all Arizonans. The Department expects to receive a significant benefit, greater than the cost incurred for drafting amended rules, for providing rules for child care facilities that clarify tummy time for non-crawling infants and removes barriers for enrolled children to have access to emergency medications related to respiratory distress.

### **Child Care Facilities and Staff**

The Department expects that adding a definition for "tummy time" and clarifying tummy time requirements in R9-5-502 related to child care facilities' policies and procedures will provide a greater benefit to child care facilities and staff who are responsible for caring for and supervising non-crawling infants. The "tummy time" definition specifies a non-crawling infant's weaknesses, identifies physical and sensory interaction necessary to ensure that the non-crawling infant's developmental needs are met, and ensures a healthy life for the non-crawling infant. The definition clarifies for staff members that tummy time is not play time, but an activity required regularly to assist a non-crawling infant's development that will increase infant's physical strength, as well as infant's sensory perception, acuities, and social interactions. In addition, amended-new rules require child care facilities to revise policies and procedures related to non-crawling infants to make clearer when and how staff members are to provide tummy time supervision and interaction with non-crawling infants, including an assigned staff member's assessment, limiting the time period a non-crawling infant receives tummy time based on the non-crawling infant's age, and documenting tummy time when provided. The Department expects that some child care facilities that care for non-crawling infants, may incur a minimal one-time cost for revising tummy time policies and procedures. The Department expects that the one-time minimal cost for child care facilities to update tummy time policies and procedures will not be greater than the cost the child care facility will incur for being liable for a non-crawling infants death. Child care facilities are required to employ individuals "who are qualified by education or experience to meet their respective responsibilities in the care of children" pursuant to A.R.S. 36-883(A) and as required in Article 4, Facility Staff. The Department anticipates that the amended rules may have a significant benefit for child care facilities and staff for providing excellent care that increases health and safety of child care facilities enrolled non-crawling infants.

In addition, the Department anticipates that child care facilities may incur a minimal cost to update policies and procedure related to the new requirements added to R9-5-516 for child care facilities to comply with A.R.S. § 36-2229(B) and (D) and A.R.S. § 15-341. A.R.S. § 36-2229 (B) allows child care facilities to store and administer or provide an inhaler to an individual experiencing respiratory distress specified in A.R.S. § 36-2229(D) and A.R.S. § 15-341 allows school-aged children to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices. The Department expects child care facilities will receive a significant benefit, greater than the minimal cost of revising child care facilities policies and procedures, for allowing-assisting enrolled children who need immediate access to an inhaler during respiratory distress. The Department also expects child care facilities will receive a significant benefit, above minimal costs, for allowing enrolled school-aged children to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices. The Department anticipates that some child care facilities may receive a significant benefit from parents who choose to enroll their child at a child care facility that allows, provides, and assists in the administration of an inhaler or other emergency medication. Additionally, the Department anticipates that some child care facilities' costs could decrease due to school-aged children administering their own emergency medication without assistance for a child care facility's staff member. Overall, the Department expects that child care facilities' benefits will be greater than any costs incurred by this rulemaking.

#### **Children enrolled in child care facilities and parents**

The Department expects that the increase in the quality of care provided by child care facilities who comply with the new rules will provide enrolled non-crawling infants and enrolled children and parents a significant benefit. As mentioned previously, since child care facilities are currently required to employ individuals "who are qualified by education or experience to meet their respective responsibilities in the care of children" pursuant to A.R.S. § 36-883(A) and as required in Article 4, Facility Staff, the Department does not expect the rulemaking to increase costs for non-crawling infants, enrolled children, and parents. The Department anticipates that non-crawling infants will mostly likely receive better care for having rules that are more effective and clearer to ensure developmental activities are provided, such as tummy time, and attending staff will supervise and interact in a manner required to maintain a non-crawling infant's health and safety. In addition, the Department anticipates that enrolled children and parents may receive a significant benefit for having a child care facility that stores and administers or provides an inhaler to an individual experiencing respiratory distress, specified in A.R.S. § 36-2229, and allows school-aged children to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices, specified in A.R.S. § 15-341. The Department expects parents will receive a significant benefit for knowing that their enrolled child/children have immediate access to an inhaler or other emergency medications when needed. The Department does not anticipate that enrolled children and parents will incur any costs related to having requirements consistent with A.R.S. § 36-2229 and A.R.S. § 15-341.

## **The Public**

The Department expects that the public will receive a significant benefit for living in a state that protects children and parents by having licensed child care facilities comply with requirements that ensure and increase children's health and safety, specifically, requirements for supervision and developmental activities related to non-crawling infants and requirements for enrolled children to have immediate access to emergency medication when experiencing respiratory distress. The Department does not expect the public to incur any costs associated with the rulemaking.

**4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking.**

The Department does not expect public or private employment in business, agencies, and political subdivisions of this state will be affected by this rulemaking. The rulemaking does not require child care facilities or the Department to hire or dismiss employees.

**5. A statement of the probable impact of the rules on small businesses:**

**a. An identification of the small business subject to the rulemaking:**

Small businesses affected by the rulemaking includes licensed child care facilities.

**b. The administrative and other costs required for compliance with the rules:**

The Department expects that some licensed child care facilities may incur a minimal one-time cost for having to revise administrative policies and procedures related to R9-5-502, Supplemental Standards for Infants (tummy time) and R9-5-516, Medications.

**c. A description of the methods that the agency may use to reduce the impact on small businesses:**

The Department knows of no other methods to further reduce the impact on small businesses and believes that the rulemaking amends and adds requirements of general applicability consistent with A.R.S. § 41-1001(18).

**d. The probable costs and benefits to private persons and consumers who are directly affected by the rulemaking:**

The Department does not expect the rulemaking to increase costs for private persons and consumers. The Department believes consumers are non-crawling infants, enrolled children, enrolled school-aged children, and parents. The Department expects that the increase in the quality of care provided by child care facilities who comply with the rulemaking will provide private persons and consumers a significant benefit. The Department anticipates that consumers will most likely receive a significant benefit and better care for having rules that ensure developmental activities are provided, such as tummy time, and attending staff will supervise and

interact in a manner required to maintain a non-crawling infant's health and safety. Additionally, the Department expects parents will receive a significant benefit for knowing that their enrolled children have immediate access to an inhaler or other emergency medications when needed. The Department does not expect consumers will incur any costs related to having requirements consistent with A.R.S. § 36-2229 and A.R.S. § 15-341.

**6. A statement of the probable effect on state revenues:**

The Department does not expect the rules to have an effect on state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:**

The Department has determined that 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.

## CHAPTER 5. DEPARTMENT OF HEALTH SERVICES - CHILD CARE FACILITIES

## ARTICLE 1. GENERAL

**R9-5-101. Definitions**

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. "Abuse" has the same meaning as in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
  - a. Causes injury to an enrolled child,
  - b. Requires attention from a staff member, and
  - c. May or may not be an emergency.
3. "Accommodation school" has the same meaning as in A.R.S. § 15-101.
4. "Accredited" means approved by the:
  - a. New England Commission of Institution of Higher Education,
  - b. Middle States Commission of Higher Education,
  - c. North Central the Higher Learning Commission,
  - d. Northwest Commission on Colleges and Universities,
  - e. Commission on Colleges, or
  - f. Western Association of Schools and Colleges.
5. "Activity" means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. "Activity area" means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
8. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
9. "Adult" means an individual who is at least 18 years of age.
10. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
11. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. "Applicant" means a person or governmental agency requesting one of the following:
  - a. A license, or
  - b. Approval of a change affecting a license under R9-5-208.
13. "Application" means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.
14. "Assistant teacher-caregiver" means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. "Association" means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. "Beverage" means a liquid for drinking, including water.
17. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
18. "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, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
19. "Calendar week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
20. "C.C.P." means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.
21. "C.D.A." means Child Development Associate, a credential awarded by the Council for Professional Recognition.
22. "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
23. "Charter school" has the same meaning as in A.R.S. § 15-101.
24. "Child care experience" means an individual's documented work with children in:
  - a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
  - b. A public school, a charter school, a private school, or an accommodation school;
  - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
  - d. One of the following professional fields:
    - i. Nursing,
    - ii. Social work,
    - iii. Psychology,
    - iv. Child development, or
    - v. A closely-related field.
25. "Child care services" means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
26. "Child with special needs" means:
  - a. A child with a health care provider's diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
  - b. A child with a "developmental disability" as defined in A.R.S. § 36-551; or
  - c. A "child with a disability" as defined in A.R.S. § 15-761.
27. "Clean" means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
28. "Closely-related field" means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
29. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
30. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
31. "Corporal punishment" means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
32. "CPR" means cardiopulmonary resuscitation.
33. "Credit hour" means an academic unit earned at an accredited college or university:
  - a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or

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- b. Completing practical work for a course as determined by the accredited college or university.
34. "Designated agent" means an individual who meets the requirements in A.R.S. § 36-889(D).
35. "Developmentally-appropriate" means consistent with a child's physical, emotional, social, cultural, and cognitive development, based on the child's age and family background and the child's personality, learning style, and pattern and timing of growth.
36. "Discipline" means the on-going process of helping a child develop self-control and assume responsibility for the child's own actions.
37. "Documentation" means information in written, photographic, electronic, or other permanent form.
38. "Electronic signature" has the same meaning as in A.R.S. § 41-351(9).
39. "Emergency" means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
40. "Endanger" means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
41. "Enrolled" means placed by a parent and accepted by a licensee for child care services.
42. "Evening and nighttime care" means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
43. "Facility" has the same meaning as "child care facility" in A.R.S. § 36-881.
44. "Facility director" means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
45. "Facility premises" means property that is:
- Designated on an application for a license by the applicant; and
  - Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
46. "Fall zone" means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
47. "Field trip" means an activity planned by a staff member for an enrolled child:
- At a location or area that is not licensed for child care services by the Department, or
  - At a child care facility in which the child is not enrolled.
48. "Final construction drawings" means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.
49. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
50. "Food preparation" means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
51. "Full-day care" means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
52. "Governmental agency" has the same meaning as in A.R.S. § 44-7002.
53. "Guidance" means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
54. "Hazard" means a source of endangerment.
55. "Health care provider" means a physician, physician assistant, or registered nurse practitioner.
56. "High school equivalency diploma" means:
- A document issued by the State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
  - A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
  - A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
57. "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
58. "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
59. "Immediate" or "immediately" means without restriction, delay, or hesitation.
60. "Inaccessible" means:
- Out of an enrolled child's reach, or
  - Locked.
61. "Infant" means:
- A child 12 months of age or younger, or
  - A child 18 months of age or younger who is not yet walking.
62. "Infant care" means child care services provided to an infant.
63. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
64. "Inspection" means:
- Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
  - Review of facility documents, records, or reports by the Department; or
  - Examination of a facility by a local governmental agency.
65. "Lesson plan" means a written description of the activities scheduled in each activity area for a day.
66. "License" means the written authorization issued by the Department to operate a facility in Arizona.
67. "Licensed applicator" who complies with A.A.C. R3-8-201(C).
68. "Licensed capacity" means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
69. "Licensee" means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
70. "Local" means under the jurisdiction of a city or county in Arizona.

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71. "Mat" means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child's body.
72. "Medication" means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
73. "Menu" means:
- A written description of the food that a facility provides and serves as a meal or snack, or
  - The combination of food that a facility provides and serves as a meal or snack.
74. "Motor vehicle" has the same meaning as in A.R.S. § 28-101.
75. "N.A.C." means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.
76. "Name" means, for an individual, the individual's first name and the individual's last name.
77. "Naptime" means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.
78. "Neglect" has the same meaning as in A.R.S. § 8-201.
79. "One-year-old" means a child who is not an infant and at least 12 months of age but not yet two years of age.
80. "Outbreak" has the same meaning as in A.A.C. R9-6-101.
81. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
82. "Parent" means:
- A natural or adoptive mother or father,
  - A legal guardian appointed by a court of competent jurisdiction, or
  - A "custodian" as defined in A.R.S. § 8-201.
83. "Part-day care" means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
84. "Perishable food" means food that becomes unfit for human consumption if not stored to prevent spoilage.
85. "Pesticide" has the same meaning as in A.R.S. § 32-3601.
86. "Pesticide label" means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
87. "Physical injury" means temporary or permanent damage or impairment to a child's body.
88. "Physical plant" means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
89. "Physician" means an individual licensed as a doctor of:
- Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - Osteopathic medicine under A.R.S. Title 32, Chapter 17;
  - Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
  - Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
90. "Physician assistant" means:
- An individual who is licensed under A.R.S. Title 32, Chapter 25; or
  - An individual who is licensed as a physician assistant under the law of another state.
91. "Private pool" has the same meaning as "private residential swimming pool" in A.A.C. R18-5-201.
92. "Private school" has the same meaning as in A.R.S. § 15-101.
93. "Program" means a variety of activities organized and conducted by a staff member.
94. "Public pool" has the same meaning as "public swimming pool" in A.A.C. R18-5-201.
95. "Public school" has the same meaning as "school" in A.R.S. § 15-101.
96. "Registered nurse practitioner" means:
- An individual who is licensed and certified as a "registered nurse practitioner" under A.R.S. § 32-1601, or
  - An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
97. "Regular basis" means at recurring, fixed, or uniform intervals.
98. "Responsible party" means an individual or a group of individuals who:
- Is assigned by a public school, charter school, or governmental agency; and
  - Has general oversight of the child care facility.
99. "Sanitize" means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
100. "School-age child" means a child who:
- Meets one of the following:
    - Is five years old on or before January 1 of the current school year, or
    - Is five years old on or before January 1 of the most recent school year; and
  - Meets one of the following:
    - Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
    - Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
    - Is home-schooled at a kindergarten or higher level during the current school year; or
    - Was home-schooled at a kindergarten or higher level during the most recent school year.
101. "School-age child care" means child care services provided to a school-age child.
102. "School campus" means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
103. "School governing board" has the same meaning as "governing board" in A.R.S. § 15-101.
104. "Screen time" means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.
105. "Semi-public pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.
106. "Service classification" means one of the following:
- Full-day care;
  - Part-day care;
  - Evening and nighttime care;
  - Infant care;
  - One-year-old child care;

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- f. Two-year-old child care;
  - g. Three-year-old, four-year-old, and five-year-old child care;
  - h. School-age child care; or
  - i. Weekend care.
107. "Signatory" means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.
108. "Signed" means affixed with an individual's signature or with a symbol representing an individual's signature if the individual is unable to write the individual's name.
109. "Sippy cup" means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
110. "Space utilization" means the designated use of an area within a facility for specific child care services or activities.
111. "Staff" or "staff member" means the same as "child care personnel" as defined in A.R.S. § 36-883.02.
112. "Student-aide" means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.
113. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.
114. "Supervision" means:
- a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or
  - b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.
115. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.
116. "Teacher-caregiver" means a staff member responsible for developing, planning, and conducting child care activities.
117. "Teacher-caregiver-aide" means a staff member who provides child care services under the supervision of a teacher-caregiver.
118. "Training" means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.
119. "Volunteer" means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.
120. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6).  
Amended by adding a new paragraph (16) and renumbering accordingly effective July 7, 1988 (Supp. 88-3).  
Amended as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emer-

gency amendments readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency amendments readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Emergency amendments readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency amendments readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Amended effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 24 A.A.R. 3429, effective December 5, 2018 (Supp. 18-4).

**R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-provided Training Requirements**

When an applicant or licensee is required by this Chapter to provide information on or sign documents, possess a fingerprint clearance card, or complete Department-provided training, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual;
2. If the applicant or licensee is a business organization, a designated agent who meets the requirements in A.R.S. § 36-889(D);
3. If the applicant or licensee is a public school, an individual designated in writing as signatory for the public school by the school district governing board or school district superintendent;
4. If the applicant or licensee is a charter school, the person approved to operate the charter school by the school district governing board, the Arizona State Board of Education, or the Arizona State Board for Charter Schools; and
5. If the applicant or licensee is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing as signatory by that individual.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

**ARTICLE 2. FACILITY LICENSURE****R9-5-201. Application for a License**

- A. An applicant for a license shall:
1. Be at least 21 years of age;
  2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
  3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
  4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;

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5. Except as provided in subsection (D), prepares and posts a dated lesson plan in each indoor activity area for each calendar week, which is maintained on facility premises for 12 months after the lesson plan date and provides opportunities for each child to:
    - a. Gain a positive self-concept;
    - b. Develop and practice social skills;
    - c. Think, reason, question, and experiment;
    - d. Acquire language skills;
    - e. Develop physical coordination skills;
    - f. Participate in structured large muscle physical activity;
    - g. Develop habits that meet health, safety, and nutritional needs;
    - h. Express creativity;
    - i. Learn to respect cultural diversity of children and staff;
    - j. Learn self-help skills; and
    - k. Develop a sense of responsibility and independence;
  6. If an activity in the lesson plan required in subsection (C)(5) includes screen time, include in the lesson plan the duration of the screen time in minutes;
  7. Except as provided in subsection (C)(8), implements the schedule in subsection (C)(4) and lesson plan in subsection (C)(5);
  8. If the schedule in subsection (C)(4) or lesson plan in subsection (C)(5) is not implemented, writes on the schedule or the lesson plan the activity that is implemented;
  9. Does the following when a parent permits or asks a staff member to apply personal products on an enrolled child, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, toothpaste, and baby diapering preparations:
    - a. Obtains the enrolled child's personal products from the enrolled child's parent or, if the licensee provides the personal products for use by the enrolled child, obtains written approval for use of the products from the enrolled child's parent;
    - b. Labels the personal products with the enrolled child's name; and
    - c. Keeps the personal products inaccessible to enrolled children;
  10. When a parent permits, allows an enrolled school-age child to possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.
  11. In an indoor activity area that does not have a diaper changing area:
    - a. Stores an enrolled child's wet or soiled clothing in a sealed plastic bag labeled with the enrolled child's name; and
    - b. Sends an enrolled child's wet or soiled clothing home with the enrolled child when the facility releases the enrolled child to the enrolled child's parent; and
  12. Monitors an enrolled child for overheating or overexposure to the sun. If the enrolled child exhibits signs of overheating or overexposure to the sun, a staff member who has the first aid training required by R9-5-403(E) shall evaluate and treat the enrolled child.
- D.** A licensee is not required to have a schedule required in subsection (C)(4) or a lesson plan required in subsection (C)(5) for an indoor activity area that is approved and used:
1. By enrolled children only for:
    - a. Snacks or meals, or
    - b. A specific activity,
  2. To provide child care services to infants, or
  3. As a substitute for an outdoor activity area.
- Historical Note**
- Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 24 A.A.R. 3429, effective December 5, 2018 (Supp. 18-4).
- R9-5-502. Supplemental Standards for Infants**
- A.** A licensee providing child care services for infants shall:
1. Provide a wall-enclosed room for infants that provides exits required by R9-5-601(1);
  2. Provide age-appropriate active and quiet activities for each infant;
  3. Provide age-appropriate indoor and outdoor activities for each infant;
  4. Permit an infant to maintain the infant's pattern of sleeping and waking;
  5. Develop, document, and implement policies and procedures that provide an opportunity for a non-crawling infant to spend time each day on the infant's stomach while the infant is awake;
  6. Provide an outdoor activity area or an indoor activity area for large muscle development substituted for an outdoor activity area that is used by infants when enrolled children older than infants are not present;
  7. Provide space, materials, and equipment in an infant room that includes the following:
    - a. An area with nonabrasive flooring for sitting, crawling, and playing;
    - b. Toys, materials, and equipment, that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the infants in attendance that include:
      - i. Toys to enhance physical development such as toys for stacking, pulling, and grasping;
      - ii. Soft toys;
      - iii. Books;
      - iv. Toys to enhance visual development such as crib mobiles and activity mats with an object or objects suspended above the infant's head; and
      - v. Unbreakable mirrors; and
    - c. At least one adult-size chair for use by a:
      - i. Staff member when holding or feeding an infant, or
      - ii. Nursing mother when breastfeeding her infant;
  8. Provide a crib for each infant that:
    - a. Has bars or openings spaced no more than 2 3/8 inches apart and a crib mattress measured to fit not more than 1/2 inch from the crib side;
    - b. Has a commercially waterproofed mattress; and
    - c. Is furnished with clean, sanitized, crib-size bedding, including a fitted sheet and top sheet or a blanket;
  9. Prohibit the use of stacked cribs;
  10. Ensure that an occupied crib with a crib side that does not have a non-porous barrier is placed at least 2 feet from another occupied crib side that does not have a non-porous barrier; and
  11. Label each food container received from the parent with the infant's name.
- B.** A licensee providing child care services for infants shall not:
1. Allow an infant room to be used as a passageway to another area of the facility;

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2. Permit an infant who is awake to remain for more than 30 consecutive minutes in a crib, swing, feeding chair, infant seat, or any equipment that confines movement;
  3. Permit an infant to use a walker; or
  4. Allow screen time in an infant room.
- C. A licensee shall ensure that:
1. A staff member providing child care services in an infant room:
    - a. Plays and talks with each infant;
    - b. Holds and rocks each infant;
    - c. Responds immediately to each infant's distress signals;
    - d. Keeps dated, daily, documentation of each infant including:
      - i. A description of any activities the infant participated in,
      - ii. The infant's food consumption, and
      - iii. Diaper changes;
    - e. Maintains the documentation in subsection (C)(1)(d) on facility premises for 12 months after the date on the documentation;
    - f. Provides a copy of the documentation in subsection (C)(1)(d) to the infant's parent upon request;
    - g. Does not allow bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products in a crib when an infant is in the crib;
    - h. Cleans and sanitizes each crib and mattress used by an infant when soiled;
    - i. Changes each crib sheet and blanket before use by another infant, when soiled, or at least once every 24 hours;
    - j. Cleans and sanitizes all sheets and blankets before use by another infant;
    - k. Places an infant to sleep on the infant's back, unless the infant's parent submits written instructions from the infant's health care provider that states otherwise;
    - l. Obtains written, current, and dated dietary instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility;
    - m. Posts the current written dietary instructions in the infant room and the kitchen and maintains the instructions on facility premises for 12 months after the date of the instructions; and
    - n. Follows the current written dietary instructions of a parent when feeding the infant;
  2. A staff member providing child care services in an infant room does not:
    - a. Place an infant directly on a waterproof mattress cover; or
    - b. Place an infant to sleep using a positioning device that restricts movement, unless the infant's health care provider has instructed otherwise in writing;
  3. When preparing, using, or caring for an infant's feeding bottles, a staff member:
    - a. Labels each bottle received from the parent with the infant's name;
    - b. Ensures that a bottle is not:
      - i. Heated in a microwave oven;
      - ii. Propped for an infant feeding; or
      - iii. Permitted in an infant's crib unless the written instructions required by subsection (C)(1)(l) state otherwise;
    - c. Empties and rinses bottles previously used by an infant; and
    - d. Cleans and sanitizes a bottle, bottle cover, and nipple before reuse; and
  4. When feeding an infant, a staff member:
    - a. Provides an infant with food for growth and development that includes:
      - i. Formula provided by the infant's parent or the licensee or breast milk provided by the infant's parent, following written instructions required by subsection (C)(1)(l); and
      - ii. Cereal as requested by the infant's parent or health care provider;
    - b. If the staff member prepares an infant's formula, prepares the infant's formula in a sanitary manner;
    - c. Stores formula and breast milk in a sanitary manner at the facility;
    - d. Does not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless the written instructions required by subsection (C)(1)(l) state otherwise;
    - e. Except for finger food, feeds solid food to an infant by spoon from an individual container;
    - f. Uses a separate container and spoon for each infant;
    - g. Holds and feeds an infant under 6 months of age and an infant older than 6 months of age who cannot hold a bottle for feeding; and
    - h. If an infant is no longer being held for feeding, seats the infant in a feeding chair or at a table with a chair that allows the infant to reach the food while sitting.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

**R9-5-503. Standards for Diaper Changing**

- A. A licensee shall ensure that each diaper changing area required in R9-5-601(4) contains:
1. A nonabsorbent, sanitizable diaper changing surface that is:
    - a. Seamless and smooth, and
    - b. Kept clear of items not required for diaper changing;
  2. A hand-washing sink next to the diaper changing surface for staff use when changing diapers and for washing an enrolled child during or after diapering, that provides:
    - a. Running water between 86° F and 110° F,
    - b. Soap from a dispenser, and
    - c. Single-use paper hand towels from a dispenser;
  3. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled diapers; and
  4. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled clothing.
- B. A licensee shall ensure that a staff member does not:
1. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing area;
  2. Draw water for human consumption from a diaper changing area sink; or
  3. Except as provided in subsection (C), if responsible for food preparation, change diapers until food preparation duties have been completed for the day.
- C. A staff member who provides child care services to an infant:
1. May throughout the time the staff member provides child care services to the infant:
    - a. Change the infant's diaper, and
    - b. Prepare the infant's formula or cereal; and

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1. Notifies the enrolled child's parent immediately after the accident, injury, or emergency;
  2. Documents:
    - a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
    - b. The method used to notify the enrolled child's parent; and
    - c. The time the enrolled child's parent was notified; and
  3. Maintains documentation required in subsection (F)(2) on facility premises for 12 months after the date of the child's disenrollment.
- G.** If an enrolled child's parent informs a staff member at the facility that the enrolled child's parent obtained medical treatment from a health care provider for an accident, injury, or emergency the enrolled child had while attending the facility, a licensee shall ensure that a staff member:
1. Documents any information about the enrolled child's accident, injury, or emergency received from the enrolled child's parent; and
  2. Maintains documentation required in subsection (G)(1) on facility premises for 12 months after the date of the child's disenrollment.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

**R9-5-515. Illness and Infestation**

- A.** A licensee shall not permit an enrolled child to remain at the facility if a staff member determines that the enrolled child shows signs of illness or infestation.
- B.** If an enrolled child exhibits signs of illness or infestation at a facility, a licensee shall ensure that a staff member:
1. Immediately separates the enrolled child from other enrolled children,
  2. Immediately notifies the enrolled child's parent by telephone or other expeditious means to arrange for the enrolled child's removal from the facility, and
  3. Maintains documentation of the notification on facility premises for 12 months after the date of the notification.
- C.** A licensee shall ensure that a staff member who has signs of illness or infestation is excluded from a facility.
- D.** A facility director shall not permit a staff member to return to a facility until free from signs of illness or infestation or until the staff member provides documentation by a health care provider that the individual may return to the facility.
- E.** If a staff member or enrolled child contracts a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, a licensee shall ensure that, within 24 hours of notice of the communicable disease or infestation, written notice is provided to each staff member, parent, and the local health department.
- F.** A licensee shall ensure that:
1. A dated, written notice of the communicable disease or infestation is prepared and posted in the facility's entrance as required by R9-5-303;
  2. Documentation of the notification is maintained on facility premises for 12 months from the date of the notification; and
  3. Documentation of the absences of staff members and enrolled children due to a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, is prepared

and maintained on facility premises for 12 months from the first date of absence.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

**R9-5-516. Medications**

- A.** A licensee shall ensure that a written statement is prepared and maintained on facility premises that specifies:
1. Whether prescription or nonprescription medications are administered to enrolled children; and
  2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.
- B.** If prescription or nonprescription medications are administered, a licensee shall ensure that:
1. A facility director, or a staff member designated in writing by the facility director, is responsible for the administration of all medications in the facility, including storing, supervising an enrolled child's ingestion of a medication, and documenting all medications administered to an enrolled child;
  2. A facility director ensures that only one staff member in the facility at any given time is responsible for the administration of medications;
  3. A facility director, or a staff member designated in writing by the facility director, does not administer a medication to an enrolled child unless the facility receives written authorization signed by the enrolled child's parent or health care provider that includes the:
    - a. Name of the enrolled child;
    - b. Type of the medication;
    - c. Prescription number, if any;
    - d. Instructions for administration specifying the:
      - i. Dosage and route of administration;
      - ii. If indicated, starting and ending dates of the dosage period; and
      - iii. Times and frequency of administration;
    - e. Reason for the medication; and
    - f. Date of authorization; and
  4. A staff member:
    - a. Administers a prescription medication provided by a parent only from a container dispensed by a pharmacy;
    - b. Administers a nonprescription medication provided by a parent for an enrolled child only from a container prepackaged and labeled for use by the manufacturer and labeled with the enrolled child's name;
    - c. Does not administer any medication that has been transferred from one container to another; and
    - d. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the facility receives written authorization from the enrolled child's health care provider.
- C.** A licensee shall allow an enrolled child to receive an injection only after obtaining a written authorization from a health care provider.
- D.** A licensee shall maintain the health care provider's written authorization required in subsection (C) on facility premises for 12 months after the date of the written authorization.
- E.** An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an

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individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).

- F.** A licensee shall maintain documentation of all medications administered to an enrolled child.
1. Documentation shall contain:
    - a. The name of the enrolled child;
    - b. The name and amount of medication administered and the prescription number, if any;
    - c. The date and time the medication was administered; and
    - d. The signature of the staff member who administered the medication to the enrolled child; and
  2. A licensee shall maintain the documentation on facility premises for 12 months after the date the medication is administered.
- G.** A licensee shall return all unused prescription and nonprescription medications to a parent when the medication prescription date has expired or the medication is no longer being administered to the enrolled child or dispose of the medication if unable to locate the enrolled child's parent after the child's disenrollment.
- H.** Except as provided in subsection (J), a licensee shall ensure that prescription and nonprescription medications are stored as follows:
1. An enrolled child's medication is kept in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medications and is located out of reach of children;
  2. Medication for a staff member is kept in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications and is located out of reach of children; and
  3. Medications requiring refrigeration are kept in a locked, leak-proof container in a refrigerator.
- I.** A licensee shall ensure that a facility does not stock a supply of medications for administration to enrolled children, including:
1. Any prescription medication; or
  2. A nonprescription medication such as aspirin, acetaminophen, ibuprofen, or cough syrup.
- J.** A staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms:
1. May be kept in the activity area where the staff member or enrolled child is present; and
  2. Except when the prescription medication is administered to treat life-threatening symptoms, is inaccessible to an enrolled child.

**Historical Note**

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3476, effective August 17, 2000 (Supp. 00-3). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

**R9-5-517. Transportation**

- A.** A licensee who transports an enrolled child in a motor vehicle that the licensee owns, or acquires for use by contract, shall:
1. Obtain dated, written permission from the enrolled child's parent before the licensee transports the enrolled child;
  2. Maintain written permission required in subsection (A)(1) on facility premises for 12 months after the date on the written permission;
- B.** A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
1. Is 18 years of age or older;
  2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. Title 28, Chapter 8;
  3. Carries a list stating the name of each enrolled child being transported and a copy of each enrolled child's Emergency, Information, and Immunization Record card

3. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
4. Maintain documentation of current motor vehicle insurance coverage inside the motor vehicle;
5. Contact the Department no later than 24 hours after a motor vehicle accident that occurs while transporting an enrolled child;
6. Submit a written report to the Department within seven calendar days after a motor vehicle accident that occurs while transporting an enrolled child;
7. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
8. Use a child passenger restraint system, as required by A.R.S. § 28-907, for each enrolled child who is:
  - a. Under eight years of age, and
  - b. Not more than four feet nine inches tall.
9. Ensure that the motor vehicle has:
  - a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F;
  - b. Except as provided in subsection (E), a working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F;
  - c. Except as provided in subsection (F), a first aid kit that meets the requirements of R9-5-514(A);
  - d. Two large, clean towels or blankets; and
  - e. Sufficient drinking water available to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each enrolled child can drink from a different cup or receptacle;
10. Ensure that the motor vehicle is:
  - a. Maintained in a clean condition,
  - b. In a mechanically safe condition, and
  - c. Free from hazards; and
11. Maintain the service and repair records of the motor vehicle as follows:
  - a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months after the date of an inspection or repair in a single location on facility premises;
  - b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101, shall maintain the service and repair records for the school bus as provided in A.A.C. R17-9-108(F); and
  - c. A school governing board, charter school, or person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school

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children, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

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20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

- (a) Screening in early pregnancy for detecting high risk conditions.
- (b) Comprehensive prenatal health care.
- (c) Maternity, delivery and postpartum care.
- (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
- (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for the developmentally disabled. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement

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treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

### **36-136. Powers and duties of director; compensation of personnel; rules; definition (updated 2017)**

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.

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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

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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

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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

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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

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pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt

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ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

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

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

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

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

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

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### 36-881. Definitions

In this article, unless the context otherwise requires:

1. "Child" means any person through the age of fourteen years. Child also means a person who is under eighteen years of age if the child has a developmental disability as defined in section 36-551 or has at least one of the disabilities listed in section 15-761, paragraph 2 and requires special education as defined in section 15-761.
2. "Child care" means the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes.
3. "Child care facility" means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor.
4. "Controlling person" means a person who:
  - (a) Through ownership, has the power to vote at least ten per cent of the outstanding voting securities.
  - (b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten per cent of the voting rights of the partnership.
  - (c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator, an agent or any person who owns or controls at least ten per cent of the voting securities.
  - (d) Holds a beneficial interest in ten per cent or more of the liabilities of the applicant or the licensee.
5. "Department" means the department of health services.
6. "Director" means the director of the department of health services.
7. "Person" means an individual, partnership, corporation, limited liability company, association, day nursery, nursery school, day camp, kindergarten, child care agency, school governing board, charter school or child care center that operates a child care facility.
8. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for licensure or a licensed child care facility does not pose a direct risk to the life, health or safety of children.

### 36-882. License; posting; transfer prohibited; fees; provisional license; renewal; exemption from rule making

A. A child care facility shall not receive any child for care, supervision or training unless the facility is licensed by the department of health services.

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B. An application for a license shall be made on a written or electronic form prescribed by the department and shall include:

1. Information required by the department for the proper administration of this chapter and rules adopted pursuant to this chapter.
2. The name and business or residential address of each controlling person.
3. An affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. An application for an initial license shall include:

1. The form that is required pursuant to section 36-883.02, subsection C and that is completed by the applicant.
2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.
3. If the applicant's facility is located within one-fourth mile of any agricultural land, the names and addresses of the owners and lessees of the agricultural land and a copy of the agreement required pursuant to subsection D of this section.

D. The department shall deny any license that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may license the child care facility to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care facility, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection shall not apply to the issuance or renewal of a license for a child care facility located in the same location for which a child care facility license was previously issued.

E. On receipt of an application for an initial license, the department shall inspect the applicant's physical space, activities and standards of care. If the department determines that the applicant and the applicant's facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies, the department shall issue an initial license to the applicant.

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F. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for licensing fees paid by child care facilities, including a public health discount.

G. The director, by rule, may establish and collect fees for child care facilities and a fee for late filing of applications. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

H. Pursuant to available funding, the department shall collect annual fees.

I. A license is valid from the date of issuance unless it is subsequently revoked or suspended or the licensee does not pay the licensure fee and shall specify the following:

1. The name of the applicant.
2. The exact address where the applicant will locate the facility.
3. The maximum number and age limitations of children that shall be cared for at any one time.
4. The classification of services that the facility is licensed to provide.

J. The department may issue a provisional license, not to exceed six months, to an applicant or a licensed child care facility if:

1. The facility changes director.
2. The department determines that an applicant for an initial license or a licensed child care facility is not in substantial compliance with this chapter and rules adopted pursuant to this chapter and the immediate interests of children, families and the general public are best served if the child care facility or the applicant is given an opportunity to correct deficiencies.

K. A provisional license shall state the reason for the provisional status.

L. On the expiration of a provisional license, the department shall issue a regular license if the department determines that the licensee and the child care facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies.

M. The licensee shall notify the department in writing within ten days of any change in the child care facility's director.

N. The license is not transferable from person to person and is valid only for the quarters occupied at the time of issuance.

O. The license shall be conspicuously posted in the child care facility.

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P. The licensee shall conspicuously post a schedule of fees charged for services and the established policy for a refund of fees for services not rendered.

Q. The licensee shall keep current department inspection reports at the child care facility and shall make them available to parents on request. The licensee shall conspicuously post a notice that identifies the location where these inspection reports are available for review.

R. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a licensee who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
2. Falsified information on any form required by section 36-883.02.

S. Licensees may pay licensure fees by installment payments based on procedures established by the department.

T. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

U. If the department lowers fees, the department may refund or credit fees to licensees.

V. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.

### **36-883. Standards of care; rules; classifications**

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

1. Adequate physical facilities for the care of children such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas and, if provided by the facility, transportation safely to and from the premises.
2. Adequate staffing per number and age groups of children by persons qualified by education or experience to meet their respective responsibilities in the care of children.
3. Activities, toys and equipment to enhance the development of each child.
4. Nutritious and well-balanced food.
5. Encouragement of parental participation.
6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

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B. The department shall adopt rules pursuant to title 41, chapter 6 and section 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children including:

1. The department of economic security.
2. The department of education.
3. The state fire marshal.
4. The league of Arizona cities and towns.
5. Citizen groups.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.
2. Facilities offering specific educational programs.
3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

### **36-883.01. Statement of services**

Each child care facility shall annually furnish to the department, and make available to parents on request, an explicit and up-to-date written statement of the services it offers.

### **36-883.02. Child care personnel; fingerprints; exemptions; definition**

A. Except as provided in subsection B of this section, child care personnel, including volunteers, shall submit the form prescribed in subsection C of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.

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B. Exempt from the fingerprinting requirements of subsection A of this section are parents, including foster parents and guardians, who are not employees of the child care facility and who participate in activities with their children under the supervision of and in the presence of child care personnel.

C. Applicants, licensees and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B in this state or similar offenses in another state or jurisdiction.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have not been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility in this or any other state or that they have not been denied or had revoked a certification to work in a child care facility or child care group home.

D. Employers of child care personnel shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a child care facility.

E. The forms required by subsection C of this section are confidential.

F. A child care facility shall not allow a person to be employed or volunteer in the facility in any capacity if the person has been denied a fingerprint clearance card pursuant to section 41-1758.07 or has not received an interim approval from the board of fingerprinting pursuant to section 41-619.55, subsection I.

G. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on the form required by subsection C of this section.

H. For the purposes of this section, "child care personnel" means any employee or volunteer working at a child care facility.

### **36-883.03. Employer-subsidized child care; immunity from liability**

A. An employer that subsidizes child care on a nondiscriminatory basis to its employees through a child care facility licensed pursuant to this article or through a person or facility exempt from licensure pursuant to this article but screened pursuant to section 41-1964 or 46-321 is not liable for damages as

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a result of an act or omission by the child care facility, person or exempt facility unless the employer is guilty of gross negligence in recommending the child care facility, person or facility or unless the employer is acting as the owner or has an ownership interest in or is an operator of the child care facility or exempt facility.

B. For purposes of this section, an employer is deemed to be subsidizing an employee's child care costs if the employer pays, either directly or indirectly, at least twenty-five per cent of the cost of the child care service rendered to the employee by the child care facility, person or exempt facility described in subsection A of this section.

### **36-883.04. Standards of care; rules; enforcement**

The director shall prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program. These rules shall be comparable to the rules and standards prescribed pursuant to section 36-883. The director shall also prescribe rules regarding the enforcement of the standards of care including penalties for noncompliance with these standards. These enforcement and penalty provisions shall be comparable to those existing for private child care facilities.

### **36-884. Exemptions**

This article does not apply to the care given to children by or in:

1. The homes of parents or blood relatives.
2. A religious institution conducting a nursery in conjunction with its religious services or conducting parent-supervised occasional drop-in care.
3. A unit of the public school system, including specialized professional services provided by school districts for the sole purpose of meeting mandated requirements to address the physical and mental impairments prescribed in section 15-771. If a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed pursuant to section 36-883.04.
4. A regularly organized private school engaged in an educational program that may be attended in substitution for public school pursuant to section 15-802. If the school provides child care beyond regular public school hours or for children who are not regularly enrolled in kindergarten programs or

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grades one through twelve, that portion of the school providing such care shall be considered a child care facility and is subject to this article.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.

6. Any facility that provides only recreational or instructional activities to school age children who may enter into and depart from the facility at their own volition. The facility may require the children to document their entrance into and departure from the facility. This documentation does not affect the exemption under this paragraph. The facility shall post a notice stating it is not a licensed child care facility under section 36-882.

7. Any of the Arizona state schools for the deaf and the blind.

8. A facility that provides only educational instruction for children who are at least three and not older than six years of age if all the following are true:

(a) The facility instructs only in the core subjects of math, reading and science.

(b) The facility does not accept state-subsidized tuition for the children.

(c) A child is present at the facility for not more than two and one-quarter hours a day and not more than three days a week.

(d) The instruction is not provided in place of care ordinarily provided by a parent or guardian.

(e) The facility posts a notice that the facility is not licensed under this article.

(f) The facility requires fingerprint cards of all personnel pursuant to section 36-883.02.

9. A facility that operates a day camp that provides recreational programs to children if all of the following are true:

(a) The day camp is accredited by a nationally recognized accrediting organization for day camps as approved by the department.

(b) The day camp operates for less than twenty-four hours a day and less than ten weeks each calendar year.

(c) The day camp posts a notice at the facility and on its website that it is not licensed under the laws of this state as a child care facility.

(d) The day camp provides programs only to children who are at least five years of age.

(e) The day camp requires fingerprint cards of all personnel pursuant to section 36-883.02.

### **36-885. Inspection of child care facilities**

## 9 A.AC. 5 CHILD CARE FACILITIES

A. The department or designated local health departments or its agents may at any time visit during hours of operation and inspect a child care facility to determine if it complies with this article and rules adopted under this article.

B. The department shall visit each child care facility as often as necessary to assure continued compliance with this article and department rules. The department shall make at least one unannounced visit annually.

### **36-886. Operation without a license; classification**

A. If it appears that any person is maintaining or operating a child care facility without a license, the department shall notify the facility's operator either by mail, by certified mail with return receipt requested or by delivery in person. The person affected by the notice shall, within ten days from its receipt, cease and desist operation or show proof of having a valid license. The person may, within ten days, request in writing a hearing before the director.

B. On application of the department, a magistrate shall issue a warrant to the department authorizing inspection of a child care facility if there is probable cause to believe that a person is operating the facility without a license.

C. If a person does not comply with this section the department shall notify the county attorney of the county in which the child care facility is being operated of the violation and request that criminal prosecution be commenced against the violator. The department may request the attorney general to apply for injunctive relief.

D. Any person who continues to maintain or operate a child care facility without a license ten days after receipt of notice from the department is guilty of a class 1 misdemeanor.

### **36-886.01. Injunctions**

If the department believes that a child care facility is operating under conditions that present possibilities of serious harm to children, the department shall notify the county attorney or the attorney general who shall immediately seek a restraining order and injunction against the facility.

### **36-887. Procedure for inspection of records**

A. Records maintained by the department for child care facilities are available to the public for review and copying.

## 9 A.AC. 5 CHILD CARE FACILITIES

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

1. Pursuant to a court order.
2. Pursuant to a written consent signed by the parent or guardian.
3. To a law enforcement officer who requires it for official purposes.
4. To an official of a governmental agency who requires it for official purposes.

C. The department shall enter into the child care facility's case file, contiguous to the form containing the reported violation, those documents that verify correction of reported violations.

### **36-888. Denial, revocation or suspension of license**

A. The department may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by registered mail with return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule that the person is not conforming to.

B. If the person does not respond to the written notice the department, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the child care facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

### **36-889. Licensees; applicants; residency; controlling persons; requirements**

A. Each licensee, other than a corporation, a limited liability company, an association or a partnership, shall be a citizen of the United States who is a resident of this state, or a legal resident alien who is a resident of this state. A corporation, association or limited liability company shall be a domestic entity or a foreign entity that is qualified to do business in this state. A partnership shall have at least one partner who is a citizen of the United States and who is a resident of this state, or who is a legal resident alien and who is a resident of this state.

B. The department shall not issue or renew a license unless a list of each of the applicant's or licensee's controlling persons is on file with the department and no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or other state or has had a license to operate a child care facility or a certificate to

## 9 A.AC. 5 CHILD CARE FACILITIES

operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The applicant or licensee shall notify the department within thirty days after the election of any new officer or director or of any change in the controlling persons and shall provide the department the name and business or residential address of each controlling person and an affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

D. Each applicant or licensee shall designate an agent who is authorized to receive communications from the department, including legal service of process, and to file and sign documents for the applicant or licensee. The designated agent shall be all of the following:

1. A controlling person.
2. A citizen of the United States or a legal resident alien.
3. A resident of this state.

### **36-890. Decisions**

All decisions rendered by the director, pursuant to the applicable law and regulations, shall be in writing and filed of record in the office of the department. Notice of such decisions shall be given to the affected person or licensee. If no appeal is taken by any such person or licensee within the time provided by law, the decision of the director shall be final and conclusive.

### **36-891. Civil penalty; inspection of centers; training program**

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

## 9 A.AC. 5 CHILD CARE FACILITIES

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.
6. Threats to health and safety.
7. Number of children affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

D. Unless a license is revoked or suspended, the director shall place the license of a child care facility subject to a civil penalty pursuant to subsection A on provisional license status for a period of time not to exceed six months in addition to other penalties imposed pursuant to this article.

E. Civil penalties collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. The department shall develop an instrument that documents compliance and noncompliance of child care facilities according to the criteria prescribed in its rules governing child care facility licensure. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

G. The director shall establish a child care facility training program to provide training for child care facilities and users of child care services, technical assistance materials for child care facilities and information to enhance consumer awareness.

### **36-891.01. Intermediate sanctions; notification of compliance; hearing**

A. If the director has reasonable cause to believe that a licensee is violating this article or rules adopted pursuant to this article and that the health or safety of the children is endangered, the director may impose, on written notice to the licensee, one or more of the following intermediate sanctions until the licensee is in substantial compliance with this article:

1. Immediate restrictions on new admissions to the child care facility.
2. Termination of specific services that the facility may offer.

## 9 A.AC. 5 CHILD CARE FACILITIES

3. Reduction of the facility's capacity.

B. A child care facility sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the facility is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the facility is not in substantial compliance the sanctions remain in effect. The facility may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the facility is still not in substantial compliance the sanctions remain in effect.

Thereafter, a facility may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A facility shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. A person who has been ordered by the director to restrict admission, reduce capacity or terminate specific services may request a hearing to review the director's action. The person shall make this request in writing within ten days after the person receives notice of the director's action. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

### **36-892. Violation; classification**

Any person violating the provisions of the applicable law, or regulations, is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this article.

### **36-893. Legal action or sale; effect on licensure**

A. The department shall not act on an application for licensure of a currently licensed child care facility while any enforcement or court action related to child care facility licensure is pending against that facility's current licensee.

B. The director may continue to pursue any court, administrative or enforcement action against the licensee even though the facility is in the process of being sold or transferred to a new owner.

## 9 A.AC. 5 CHILD CARE FACILITIES

C. The department shall not approve a change in facility ownership unless it determines that there has been a transfer of all legal and equitable interests, control and authority in the facility so that persons other than the transferring licensee, that licensee's agent or other parties exercising authority or supervision over the facility's daily operations or staff are responsible for and have control over the facility.

### **36-894. Medical marijuana; child care facilities; prohibition**

A person, including a cardholder as defined in section 36-2801, may not lawfully possess or use marijuana in any child care facility in this state.

### **36-894.01. Use of sunscreen in child care facilities**

A school-age child who attends a child care facility in this state may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 8, Article 1, Food and Drink

**Amend:** Article 1

**Repeal:** R9-8-101, R9-8-103, R9-8-104, Table 1, R9-8-105, R9-8-106, R9-8-108, R9-8-109

**Renumber:** R9-8-102

**New Section:** R9-8-101, R9-8-102, R9-8-103, R9-8-104, R9-8-105, R9-8-106, R9-8-107, R9-8-108, R9-8-110, R9-8-111, R9-8-112, R9-8-113, R9-8-114, R9-8-115, R9-8-116, R9-8-117, R9-8-118, R9-8-119

**New Table:** Table 1.1



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 6, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 8, Article 1, Food and Drink

**Amend:** Article 1

**Repeal:** R9-8-101, R9-8-103, R9-8-104, Table 1, R9-8-105, R9-8-106,  
R9-8-108, R9-8-109

**Renumber:** R9-8-102

**New Section:** R9-8-101, R9-8-102, R9-8-103, R9-8-104, R9-8-105, R9-8-106,  
R9-8-107, R9-8-108, R9-8-110, R9-8-111, R9-8-112, R9-8-113,  
R9-8-114, R9-8-115, R9-8-116, R9-8-117, R9-8-118, R9-8-119

**New Table:** Table 1.1

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### **Summary:**

This regular rulemaking from the Department of Health Services (Department) seeks to make changes to the rules in Title 9, Chapter 8, Article 1 regarding Food and Drink. The rules in this Article prescribe reasonably necessary measures to ensure that all food or drink sold at the retail level are fit for human consumption. The Department is proposing to amend these rules to make them consistent with a newer (2017) edition of the federal Food and Drug Administration

Food Code (Food Code). The Department also seeks to make changes to the rules to address issues identified in a recent five year review report (5YRR) for these rules, which the Council approved in May 2016, and to improve the effectiveness of the rules. In this rulemaking, the Department is also proposing to add new rules to comply with a new statute, Laws 2018, Ch. 286. This new statute requires the Department to adopt rules to establish statewide health and safety licensing standards for mobile food vendors and mobile food units. The Department received exemptions from the rulemaking moratorium on January 23, 2019 and on March 5, 2019 to conduct this rulemaking.

**Note:** The Department included the complete 2017 Food Code as part of this rulemaking submission. However, due to the file size, it is not included as part of these materials. Council Members can access the 2017 Food Code at: <https://www.fda.gov/media/110822/download>.

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

Yes. The Department cites both general and specific statutory authority for these rules.

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

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

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

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

4. **Summary of the agency's economic impact analysis:**

The Department believes that the proposed rules, which amend the current rules to be consistent with the current Food Code, may provide a significant benefit to the Department and counties by improving the ability of the Department and counties to effectively ensure that all food or drink sold at the retail level are fit for human consumption.

Additionally, the Department plans to promulgate new rules to comply with recently approved legislation which requires the Department to adopt rules to establish statewide health and safety licensing standards for mobile food vendors and mobile food units. The Department expects that food establishments may receive a significant benefit for having all counties complying with one version of the Food Code, particularly those licensees who have multiple food establishments located in multiple counties and are currently required to follow different versions of the Food Code depending on the county where the food establishment is located.

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 rulemaking does not require food establishments to hire more employees or purchase new or expensive equipment. The rulemaking does require food establishments to have an employee who is a certified food protection manager (CFPM), but the costs associated with having or acquiring this training are nominal and are not substantial costs to be passed on to private persons and consumers.

Consumers are expected to receive a significant benefit for having food that is prepared, packaged, and served according to standards designed to protect their health and safety. As such, the Department states that the benefits outweigh any potential costs associated with this rulemaking.

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

The Department identifies affected persons as: the Department, counties, food establishments, consumers, and the general public.

The Department expects that the proposed rules may provide a significant benefit to the Department and counties by improving the ability of the Department and counties to effectively ensure that all food or drink sold at the retail level is fit for human consumption. The Department and counties may also receive a significant benefit for the new requirements that allow mobile food units to obtain a state-issued license for serving food in multiple counties rather than just the county where a licensee of a mobile food unit resides.

The Department expects that food establishments may receive a significant benefit for having all counties complying with one version of the Food Code, particularly those licensees who have multiple food establishments located in multiple counties and are currently required to follow different versions of the Food Code depending on the county where the food establishment is located.

Consumers are expected to receive a significant benefit in having food that is prepared, packaged, and served according to standards designed to protect their health and safety.

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

No. The Department made a minor technical change between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. This change does not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

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

The Department did not receive any comments in conducting this rulemaking.

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

The Department states that pursuant to A.R.S. § 36-136 (Powers and duties of director; compensation of personnel; rules; definitions), the Department licenses food establishments. The Department states that while some counties may issue permits rather than licenses to food establishments, they do so pursuant to a delegation agreement between the Department and the county in lieu of a Department-issued license. The Department states that a general permit is not used. Upon review of the applicable statutes, Council staff agrees with the Department and finds that the Department is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3).

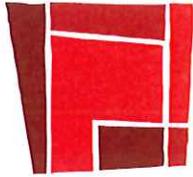
**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that there is no corresponding federal law to these rules. However, the Department indicates that the federal Department of Health and Human Services (HHS) periodically publishes editions of the “Food Code,” which the Department states is a model for safeguarding public health and ensuring that food is safe for human consumption. In this rulemaking, the Department is updating the incorporation by reference in the rules of the Food Code from the 1999 Edition to the 2017 Edition pursuant to A.R.S. § 41-1028.

**11. Conclusion**

In this rulemaking, the Department is seeking to amend the rules to conform to the 2017 Edition of the federal Food Code, address issues identified in a previous 5YRR for these rules, and to adopt new rules pursuant to Laws 2018, Ch. 286 relating to statewide health and safety licensing standards for mobile food vendors and mobile food units.

Council staff finds that this rulemaking would result in rules that are more clear, concise, understandable, effective, and consistent with other rules and statutes. The Department is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(4) and (5). Upon review of the applicable statutes, Council staff finds that the Department demonstrates an adequate justification for an immediate effective date. Council staff recommends approval of this rulemaking with an immediate effective date.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

April 20, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 8, Article 1, Regular Rulemaking

Dear Ms. Sornsins:

1. The close of record date: April 14, 2020
2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 8, Article 1, does not relate to a five-year-review report.
3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:  
The rulemaking does not establish a new fee.
4. Whether the rulemaking contains a fee increase:  
The rulemaking does not contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:  
The Department is requesting an immediate effective date for the rules.

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

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

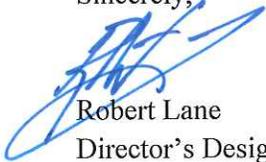
The following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;

3. The United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration; and
4. General and specific statutes authorizing the rules, including relevant statutory definitions; and

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL: tk

Enclosures

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

**NOTICE OF FINAL RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES**  
**FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**  
**ARTICLE 1 FOOD AND DRINK**

**PREAMBLE**

<b><u>1.</u></b>	<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
	Article 1	Amend
	R9-8-101.	Repeal
	R9-8-101.	New Section
	R9-8-102.	Re-number
	R9-8-102.	New Section
	R9-8-103.	Repeal
	R9-8-103.	New Section
	R9-8-104.	Repeal
	R9-8-104.	New Section
	Table 1.	Repeal
	R9-8-105.	New Section
	R9-8-105.	Repeal
	R9-8-106.	New Section
	R9-8-106.	Repeal
	R9-8-107.	New Section
	R9-8-108.	Repeal
	R9-8-108.	New Section
	<u>Table 1.1.</u>	New Table
	R9-8-109.	Repealed
	<u>R9-8-110.</u>	New Section
	<u>R9-8-111.</u>	New Section
	<u>R9-8-112.</u>	New Section
	<u>R9-8-113.</u>	New Section
	<u>R9-8-114.</u>	New Section
	<u>R9-8-115.</u>	New Section
	<u>R9-8-116.</u>	New Section

R9-8-117. New Section  
R9-8-118. New Section  
R9-8-119. New Section

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

Authorizing statutes: A.R.S. § 36-136(A)(7) and (G)

Implementing statutes: A.R.S. §§ 36-136(I)(4), 36-136(I)(5), 36-136(I)(7), and 36-1761

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

The Arizona Department of Health Services (Department) requests an immediate effective date for the new rules under A.R.S. § 41-1032 (A)(4) and (5). By prescribing measures necessary to ensure the safety of Arizonans who receive food services from licensed food establishments pursuant to 9 A.A.C. 8, Article 1, the rules are less burdensome than current rules; provide greater benefits to food establishments, consumers, counties, and the Department; and have no public impact on public health and safety and do not affect public involvement or public participation process.

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 374, February 15, 2019

Notice of Rulemaking Docket Opening: 25 A.A.R. 724, March 22, 2019

Notice of Proposed Rulemaking: 26 A.A.R. 410, March 13, 2020

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

Name: Eric Thomas, Chief

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

Telephone: (602) 364-3142

Fax: (602) 364-3146

E-mail: [Eric.Thomas@azdhs.gov](mailto:Eric.Thomas@azdhs.gov)

or

Name: Stephanie Elzenga

Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules

150 N. 18th Ave., Suite 200

Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: [Stephanie.Elzenga@azdhs.gov](mailto:Stephanie.Elzenga@azdhs.gov)

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

9 A.A.C. 8, Article 1 rules prescribe reasonably necessary measures to ensure that all food or drink sold at the retail level are fit for human consumption. The Department of Health Services (Department) plans to amend the rules to make consistent with the current (2017) United States *Food and Drug Administration Food Code (FDA Food Code)*, address matters described in the rules recent five-year-review report, and improve the effectiveness of the rules. The Department received an exception from the rulemaking moratorium established by Executive Order 2019-01 on January 23, 2019 and plans to amend the rules through a regular rulemaking. Additionally, the Department plans to promulgate new rules to make consistent with new statutory law. Laws 2018, Ch. 286 requires the Department to adopt rules to establish statewide health and safety licensing standards for mobile food vendors and mobile food units. The rules will also include requirements for statewide inspection standards. The Department received an exception from the rulemaking moratorium established by Executive Order 2019-01 on March 5, 2019 and plans to draft new rules through a regular rulemaking. The amended and new rules will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

As used in the 2020 Economic, Small Business, and Consumer Impact Statement, annual cost/revenue associated with this rulemaking are designated as minimal when 1,000 or less,

moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs are listed as significant when meaningful or important, but not readily subject to quantification. The Department identifies affected persons as the Department, counties, food establishments, consumers, and the public. The Department expects that the proposed rules may provide a significant benefit to the Department and counties by improving the ability of the Department and counties to effectively implement A.R.S. § 36-136(I)(4) by updating the United States Food and Drug Administration (FDA) 1999 Food Code to the 2017 Food Code used for licensing and inspecting food establishments. The Department and counties may also receive a significant benefit for the new requirements that allow mobile food units to obtain a state-license for serving food in multiple counties rather than just the county where a licensee of a mobile food unit resides. The Department expects that food establishments may receive a significant benefit for having all counties complying with one version of the Food Code (2017), particularly, those licensees who have multiple food establishments located in multiple counties and are currently required to follow different versions of the food code depending on the county where the food establishment is located. Additionally, with licensed food establishments following the 2017 Food Code, consumers are expected to receive a significant benefit for having food that is prepared, packaged, and served according to standards designed to protect their health and safety. The Department has determined that the benefits outweigh any potential costs associated with this rulemaking.

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

The Department made one change between the proposed rulemaking and the final rulemaking. The Department added in Paragraph 2 a citation for implementing statutes A.R.S. § 36-1761.

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

During the formal 30-day public comment period, the Department did not receive any comments.

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

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

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

A.R.S. § 36-136(I)(4) provides for the licensing of food establishments. While some

counties may issue permits rather than licenses to food establishments, these permits are issued under a delegation agreement between the Department and the county in lieu of a license from the Department. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

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

No federal law is applicable to the subject of the rule. The U.S. Department of Health and Human Services, Food and Drug Administration periodically publish editions of the “Food Code,” which is a model for safeguarding public health and ensuring food is safe for human consumption. Further, the Food Code provides a uniform system of provisions that address the safety and protection of food offered at retail and in food service. The authority to regulate food establishments comes from state statutes, and state regulatory agencies may adopt all or portions of specific editions of the Food Code, as well as other requirements not contained in the Food Code, to achieve state public health goals. This rulemaking updates the incorporation by reference from the 1999 Food Code to the 2017 Food Code according to A.R.S. § 41-1028.

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

No analysis comparing competitiveness was received by the Department.

**13. Incorporated by reference and their location in the rules:**

The United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration as specified in this Article. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and is available for order at: <https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm239035.htm>, refer to publication number IFS17.

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

The rule was not previously made as an emergency rule.

**15. The full text of the rules follows:**



**ARTICLE 1 ~~FOOD AND DRINK~~ FOOD ESTABLISHMENTS**

- R9-8-101. ~~Definitions~~ Purpose and Definitions
- R9-8-102. Management and Personnel
- R9-8-103. ~~Food Establishment License Application~~ Food
- R9-8-104. ~~Time frame~~ Equipment, Utensils, and Linens
- ~~Table 1.~~ Time frames (in days)
- R9-8-105. ~~Issuance of License~~ Water, Plumbing, and Waste
- R9-8-106. ~~License Suspension or Revocation~~ Physical Facilities
- R9-8-107. ~~Food Safety Requirements~~ Poisonous or Toxic Materials
- R9-8-108. ~~Inspection Standardization and Documentation~~ Compliance and Enforcement
- ~~Table 1.1.~~ Time-frames (in calendar days)
- R9-8-109. ~~Cease and Desist and Abatement~~ Repealed
- R9-8-110. Mobile Food Units
- R9-8-111. Compliance and Enforcement, Annex 1
- R9-8-112. References, Annex 2
- R9-8-113. Public Health Reasons/Administrative Guidelines, Annex 3
- R9-8-114. Management of Food Safety Practices, Annex 4
- R9-8-115. Conducting Risk-based Inspections, Annex 5
- R9-8-116. Food Processing Criteria, Annex 6
- R9-8-117. Model Forms, Guides, and Other Aids, Annex 7
- R9-8-118. Exempt from Regulation and Inspections
- R9-8-119. Manufactured Food Plants

**R9-8-101. Definition**

In addition to the terms defined in the material incorporated by reference in R9-8-107, which are designated by all capital letters, the following definitions apply in this Article, unless otherwise specified:

1. ~~“Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.~~
2. ~~“Applicant” means the following PERSON requesting a LICENSE:~~
  - a. ~~If an individual, the individual who owns the FOOD ESTABLISHMENT;~~
  - b. ~~If a corporation, any officer of the corporation;~~
  - c. ~~If a limited liability company, the designated manager or, if no manager is designated, any member of the limited liability company;~~
  - d. ~~If a partnership, any two of the partners;~~
  - e. ~~If a joint venture, any two individuals who signed the joint venture agreement;~~
  - f. ~~If a trust, the trustee of the trust;~~
  - g. ~~If a religious or nonprofit organization, the individual in the senior leadership position within the organization.~~
  - h. ~~If a school district, the superintendent of the district;~~
  - i. ~~If an agency, the individual in the senior leadership position within the agency; or~~
  - j. ~~If a county, municipality, or other political subdivision of the state, the individual in the senior leadership position within the county, municipality, or political subdivision.~~
3. ~~“Department” means the Arizona Department of Health Services.~~
4. ~~“Developmental disability” means the same as in A.R.S. § 36-551.~~
5. ~~“FC” means the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified and incorporated by reference in R9-8-107.~~
6. ~~“Incongruous” means inconsistent with the inspection reports of other inspectors or the REGULATORY AUTHORITY as a whole because significantly more or fewer violations of individual CRITICAL ITEMS are documented.~~
7. ~~“Prepare” means to process commercially for human consumption by manufacturing, packaging, labeling, cooking, or assembling.~~
8. ~~“Public health control” means a method to prevent transmission of foodborne illness to the CONSUMER.~~
9. ~~“Remodel” means to change the PHYSICAL FACILITIES or PLUMBING FIXTURES in a FOOD ESTABLISHMENT’S FOOD preparation, storage, or cleaning areas through~~

~~construction, replacement, or relocation, but does not include the replacement of old EQUIPMENT with new EQUIPMENT of the same type.~~

10. ~~“Requester” means a PERSON who requests an approval from the REGULATORY AUTHORITY, but who is not an applicant or a LICENSE HOLDER.~~

**R9-8-101. Purpose and Definitions**

**A.** The Department incorporates by reference the United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration and shall comply with the 2017 Food Code (FC) as specified in this Article. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and is available for order at: <https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm239035.htm>, refer to publication number IFS17.

**B.** The Department incorporates FC Chapter 1 in whole, unless otherwise specified:

1. Part 1-1 Title, Intent, Scope; and
2. Part 1-2 Definitions in part.

**C.** In FC Part 1-2, Section 1-201.10(B), the Department:

1. Uses the word “License” in place of the word “Permit.”
2. Uses the word “License holder” in place of the word “Permit holder.”
3. Modifies the following:
  - a. “Additive” means:
    - i. “Food additive” means the same as in A.R.S. § 36-901(7); and
    - ii. “Color additive” means the same as in A.R.S. § 36-901(2).
  - b. “Adulterated” means possessing one or more of the conditions enumerated in A.R.S. § 36-904(A).
  - c. “Approved” means acceptable to the REGULATORY AUTHORITY or to the FOOD regulatory agency that has jurisdiction based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
  - d. “Consumer” means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an operator of a FOOD ESTABLISHMENT and does not offer the FOOD for resale.
  - e. “Food Establishment” does not include:
    - (i) An establishment that offers only prePACKAGED FOOD that are not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

- (ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;
  - (iii) A kitchen in a private home if only FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD, is prepared for sale or service at a function such as a religious or charitable (organization’s bake sale if allowed by LAW and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOOD is prepared in a kitchen that is not subject to regulation and inspection by the REGULATORY AUTHORITY;
  - (iv) An area where FOOD that is prepared as specified in Subparagraph (iii) of this definition is sold or offered for human consumption;
  - (v) A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed 6, breakfast is the only meal offered, the number of guests served does not exceed 18, and the CONSUMER is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated and inspected by the REGULATORY AUTHORITY; or
  - (vi) A private home that receives catered or home-delivered FOOD.
- g. “Packaged” means bottled, canned, cartoned, securely bagged, or securely wrapped compliant with LAW.
  - h. “Person in charge” means the individual present at a FOOD ESTABLISHMENT who is responsible for the management of the operation of the FOOD ESTABLISHMENT at the time of inspection.
  - i. “Regulatory authority” means the Department or a public health services district, local health department, department of environmental services, or department of environmental quality carrying out delegated functions, powers, and duties on behalf of the Department.

**D.** In addition to the requirements in FC Part 1-2, Section 1-201.10(B), the Department requires definitions for:

- 1. “Administrative completeness review time-frame” means the same as in A.R.S. § 41-1072.

2. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
3. “Applicant” means an individual requesting a FOOD ESTABLISHMENT license.
4. “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, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
5. “Department” means the Arizona Department of Health Services.
6. “Developmental disability” means the same as in A.R.S. § 36-551.
7. “FC” means the United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration incorporated by reference in subsection (A).
8. “Inspection report” means a document used to record the compliance status of a FOOD ESTABLISHMENT and conveys compliance information to the license holder or PERSON IN CHARGE at the conclusion of an inspection.
9. “License” means the same as “permit” as in the FC.
10. “License holder” means the same as “permit holder” as in the FC.
11. “Overall time-frame” means the same as in A.R.S. § 41-1072.
12. “Public health nuisance” means an act, condition, or thing, specified in A.R.S. § 36-601, or any practice contrary to the health laws of this state that is harmful to the health of the public.
13. “Substantive review time-frame” means the same as in A.R.S. § 41-1072.

**R9-8-102. Management and Personnel**

**A. The Department incorporates FC Chapter 2 in whole unless otherwise specified:**

1. Part 2-1 Supervision;
2. Part 2-2 Employee Health in part;
3. Part 2-3 Personal Cleanliness;
4. Part 2-4 Hygienic Practices; and
5. Part 2-5 Responding to Contamination Events.

**B. In addition to the requirements in FC Part 2-2, the Department in:**

1. Section 2-201.12(B)(3), adds hepatitis A virus requirements specified in A.A.C. R9-6-343(B)(1) through (3).
2. Section 2-201.13(C)(2),

- a. Deletes “The FOOD EMPLOYEE provides to the PERSON IN CHARGE written medical documentation from a HEALTH PRACTITIONER that states the FOOD EMPLOYEE is free from Typhoid fever.” and
- b. Adds Typhoid fever requirements in A.A.C. R9-6-388(A)(4)(a) and (b).

**R9-8-103. Food Establishment License Application**

~~A. To obtain a FOOD ESTABLISHMENT LICENSE, an applicant shall complete and submit to the REGULATORY AUTHORITY a FOOD ESTABLISHMENT LICENSE application form supplied by the REGULATORY AUTHORITY that indicates all of the following:~~

- 1. ~~The full name, telephone number, and mailing address of the applicant;~~
- 2. ~~The name, telephone number, and street address of the FOOD ESTABLISHMENT;~~
- 3. ~~Whether the FOOD ESTABLISHMENT is mobile or stationary;~~
- 4. ~~Whether the FOOD ESTABLISHMENT is temporary or permanent;~~
- 5. ~~Whether the FOOD ESTABLISHMENT facility is one of the following:~~
  - a. ~~A new construction that is not yet completed;~~
  - b. ~~An existing structure that is being converted for use as a FOOD ESTABLISHMENT, or~~
  - e. ~~An existing FOOD ESTABLISHMENT facility that is being remodeled;~~
- 6. ~~Whether the FOOD ESTABLISHMENT prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD;~~
- 7. ~~Whether the FOOD ESTABLISHMENT does any of the following:~~
  - a. ~~Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD only to order upon CONSUMER request;~~
  - b. ~~Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD in advance, in quantities based on projected CONSUMER demand;~~
  - e. ~~Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD using time alone, rather than time and temperature, as the public health control as described in FC § 3-501.19;~~
  - d. ~~Prepares POTENTIALLY HAZARDOUS FOOD in advance using a multiple stage FOOD preparation method that may include the following:~~
    - i. ~~Combining POTENTIALLY HAZARDOUS FOOD ingredients;~~
    - ii. ~~Cooking;~~
    - iii. ~~Cooling;~~
    - iv. ~~Reheating;~~
    - v. ~~Hot or cold holding;~~

- vi. ~~Freezing, or~~
  - vii. ~~Thawing;~~
  - e. ~~Prepares FOOD as specified under subsection (A)(7)(d) for delivery to and consumption at a location off of the PREMISES where prepared;~~
  - f. ~~Prepares FOOD as specified under subsection (A)(7)(d) for service to a HIGHLY SUSCEPTIBLE POPULATION; or~~
  - g. ~~Does not prepare FOOD, but offers for sale only pre-PACKAGED FOOD that is not POTENTIALLY HAZARDOUS FOOD; and~~
  - 8. ~~The applicant's signature and the date signed.~~
- B.** ~~An applicant who operates FOOD ESTABLISHMENTS at multiple locations shall submit a completed LICENSE application for each location.~~

**R9-8-103. Food**

**A.** The Department incorporates FC Chapter 3 in whole, unless otherwise specified:

- 1. Part 3-1 Characteristics;
- 2. Part 3-2 Sources, Specifications, and Original Containers and Records;
- 3. Part 3-3 Protection From Contamination After Receiving in part;
- 4. Part 3-4 Destruction of Organisms of Public Health Concern;
- 5. Part 3-5 Limitation of Growth of Organisms of Public Health Concern;
- 6. Part 3-6 Food Identity, Presentation, and On-Premises Labeling;
- 7. Part 3-7 Contaminated Food; and
- 8. Part 3-8 Special Requirements for Highly Susceptible Populations.

**B.** In FC Part 3-3, the Department:

- 1. In paragraph 3-301.11(B), requires employees to use “non-latex SINGLE-USE gloves.”
- 2. In paragraph 3-304.15(E), requires “Latex gloves may not be used in direct contact with FOOD.”

**R9-8-104. Time frame**

**A.** ~~This Section applies to the Department and to a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 7.1 has been delegated by the Department.~~

**B.** ~~The overall time frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is provided in Table 1. The applicant, LICENSE HOLDER, or requester and the REGULATORY AUTHORITY may agree in writing to extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed 25% of the overall time frame.~~

- C.** ~~The administrative completeness review time frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is provided in Table 1 and begins on the date that the REGULATORY AUTHORITY receives an application or request for approval.~~
- ~~1. The REGULATORY AUTHORITY shall mail a notice of administrative completeness or deficiencies to the applicant, LICENSE HOLDER, or requester within the administrative completeness review time frame.~~
    - ~~a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application or request for approval.~~
    - ~~b. If the REGULATORY AUTHORITY issues a notice of deficiencies within the administrative completeness review time frame, the administrative completeness review time frame and the overall time frame are suspended from the date that the notice is issued until the date that the REGULATORY AUTHORITY receives the missing information from the applicant, LICENSE HOLDER, or requester.~~
    - ~~c. If the applicant, LICENSE HOLDER, or requester fails to submit to the REGULATORY AUTHORITY all of the information and documents listed in the notice of deficiencies within 180 days from the date that the REGULATORY AUTHORITY mailed the notice of deficiencies, the REGULATORY AUTHORITY shall consider the application or request for approval withdrawn.~~
  - ~~2. If the REGULATORY AUTHORITY issues a LICENSE or other approval to the applicant, LICENSE HOLDER, or requester during the administrative completeness review time frame, the REGULATORY AUTHORITY shall not issue a separate written notice of administrative completeness.~~
- D.** ~~The substantive review time frame described in A.R.S. § 41-1072 is provided in Table 1 and begins as of the date on the notice of administrative completeness.~~
- ~~1. The REGULATORY AUTHORITY shall mail written notification of approval or denial of the application or other request for approval to the applicant, LICENSE HOLDER, or requester within the substantive review time frame.~~
  - ~~2. As part of the substantive review for a FOOD ESTABLISHMENT LICENSE, the REGULATORY AUTHORITY may complete an inspection that may require more than one visit to the FOOD ESTABLISHMENT.~~
  - ~~3. During the substantive review time frame, the REGULATORY AUTHORITY may make one comprehensive written request for additional information, unless the REGULATORY AUTHORITY and the applicant, LICENSE HOLDER, or requester~~

~~have agreed in writing to allow the REGULATORY AUTHORITY to submit supplemental requests for information.~~

- a. ~~The comprehensive written request regarding a FOOD ESTABLISHMENT LICENSE application may include a request for submission of plans and specifications, as described in FC § 8-201.11.~~
  - b. ~~The comprehensive written request regarding a request for a VARIANCE under FC § 8-103.10 may include a request for a HACCP PLAN, as described in FC § 8-201.13(A), if the REGULATORY AUTHORITY determines that a HACCP PLAN is required.~~
  - e. ~~If the REGULATORY AUTHORITY issues a comprehensive written request or a supplemental request for information, the substantive review time frame and the overall time frame are suspended from the date that the REGULATORY AUTHORITY issues the request until the date that the REGULATORY AUTHORITY receives all of the information requested.~~
4. ~~The REGULATORY AUTHORITY shall issue a license or an approval unless:~~
- a. ~~For a FOOD ESTABLISHMENT LICENSE application, the REGULATORY AUTHORITY determines that the application for a FOOD ESTABLISHMENT LICENSE or the FOOD ESTABLISHMENT does not satisfy all of the requirements of this Article;~~
  - b. ~~For a VARIANCE, the REGULATORY AUTHORITY determines that the request for a VARIANCE fails to demonstrate that the VARIANCE will not result in a health HAZARD or nuisance;~~
  - e. ~~For approval of plans and specifications, the REGULATORY AUTHORITY determines that the plans and specifications do not satisfy all of the requirements of this Article;~~
  - d. ~~For approval of a HACCP PLAN, the REGULATORY AUTHORITY determines that the HACCP PLAN does not satisfy all of the requirements of this Article;~~
  - e. ~~For approval of an inspection form, the Department determines that the inspection form does not satisfy all of the requirements of R9-8-108(B)-(C); or~~
  - f. ~~For approval of a quality assurance program, the Department determines that the quality assurance program does not satisfy all of the requirements of R9-8-108(E)(1).~~

5. ~~If the REGULATORY AUTHORITY denies an application or request for approval, the REGULATORY AUTHORITY shall send to the applicant, LICENSE HOLDER, or requester a written notice of denial setting forth the reasons for the denial and all other information required by A.R.S. § 41-1076.~~

~~E. For the purpose of computing time frames in this Section, the day of the act, event, or default from which the designated period of time begins to run is not included. Intermediate Saturdays, Sundays, and legal holidays are included in the computation. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.~~

**R9-8-104. Equipment, Utensils, and Linens**

The Department incorporates FC Chapter 4 in whole:

1. Part 4-1 Materials for Construction and Repair;
2. Part 4-2 Design and Construction;
3. Part 4-3 Numbers and Capacities;
4. Part 4-4 Location and Installation;
5. Part 4-5 Maintenance and Operation;
6. Part 4-6 Cleaning of Equipment;
7. Part 4-7 Sanitization of Equipment and Utensils;
8. Part 4-8 Laundering; and
9. Part 4-9 Protection of Clean Items.

**Table 1. Time-frames (in days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time frame	Substantive Review Time-frame
FOOD ESTABLISHMENT LICENSE	A.R.S. § 36-136(H)(4)	60	30	30
Approval of VARIANCE under FC § 8-103.10	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Plans and Specifications under FC § 8-201.11	A.R.S. § 36-136(H)(4)	90	30	60
Approval of HACCP PLAN under FC § 8-201.13	A.R.S. § 36-136(H)(4)	90	30	60

Approval of Inspection Form	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Quality Assurance Program	A.R.S. § 36-136(H)(4)	90	30	60

**R9-8-105. Issuance of License**

A ~~FOOD ESTABLISHMENT LICENSE~~ issued by the ~~REGULATORY AUTHORITY~~ shall bear the following information:

1. ~~The name of the FOOD ESTABLISHMENT,~~
2. ~~The street address of the FOOD ESTABLISHMENT,~~
3. ~~The full name of the LICENSE HOLDER,~~
4. ~~The mailing address of the LICENSE HOLDER, and~~
5. ~~A unique identification number assigned by the REGULATORY AUTHORITY.~~

**R9-8-105. Water, Plumbing, and Waste**

**A.** The Department incorporates FC Chapter 5 in whole, unless otherwise specified:

1. Part 5-1 Water in part;
2. Part 5-2 Plumbing System;
3. Part 5-3 Mobile Water Tank and Mobile Food Establishment Water Tank;
4. Part 5-4 Sewage, Other Liquid Waste, and Rainwater; and
5. Part 5-5 Refuse, Recyclables, and Returnable.

**B.** In FC Part 5-1, the Department in Section 5-101.13 requires “BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources in accordance with LAW.”

**R9-8-106. ~~License Suspension or Revocation~~**

**A.** ~~The REGULATORY AUTHORITY may suspend or revoke a FOOD ESTABLISHMENT LICENSE if the LICENSE HOLDER:~~

1. ~~Violates this Article or A.R.S. § 36-601, or~~
2. ~~Provides false information on a LICENSE application.~~

**B.** ~~A LICENSE revocation or suspension hearing shall be conducted as follows:~~

1. ~~If the REGULATORY AUTHORITY is the Department, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings;~~
2. ~~If the REGULATORY AUTHORITY is a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10~~

~~has been delegated, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings; and~~

3. ~~For all other REGULATORY AUTHORITIES, a LICENSE revocation or suspension hearing shall be conducted in accordance with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).~~

**R9-8-106. Physical Facilities**

**A.** The Department incorporates FC Chapter 6 in whole:

1. Part 6-1 Materials for Construction and Repair;
2. Part 6-2 Design, Construction, and Installation;
3. Part 6-3 Numbers and Capacities;
4. Part 6-4 Location and Placement; and
5. Part 6-5 Maintenance and Operation.

**B.** In addition to the requirements in FC Part 6-5, the Department requires:

1. A license holder for a VENDING MACHINE to affix to a VENDING MACHINE a permanent sign that includes:
  - a. A unique identifier for the VENDING MACHINE, and
  - b. A telephone number for CONSUMERS to contact the license holder.
2. A license holder operating a water vending machine shall comply with A.A.C. R18-4-216 and other applicable LAW.

**R9-8-107. Food Safety Requirements**

**A.** ~~A LICENSE HOLDER shall comply with the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified, which is incorporated by reference. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and is available for purchase from the United States Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as report number PB99-115925, or from the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, as ISBN 0-16-050028-1; and is available on the Internet at <http://www.fda.gov>.~~

**B.** ~~The material incorporated by reference in subsection (A) is modified as follows:~~

1. ~~Where the term “permit” appears, it is replaced with “license”;~~
2. ~~Subparagraph 1-201.10(B)(2)(a) is modified to read: “‘Food additive’ has the meaning stated in A.R.S. § 36-901(7).”;~~

3. Subparagraph 1 201.10(B)(2)(b) is modified to read: “‘Color additive’ has the meaning stated in A.R.S. § 36-901(2).”;
4. Subparagraph 1 201.10(B)(3) is modified to read: “‘Adulterated’ means possessing one or more of the conditions enumerated in A.R.S. § 36-904(A).”;
5. Subparagraph 1 201.10(B)(4) is modified to read: “‘Approved’ means acceptable to the ~~REGULATORY AUTHORITY~~ or to the FOOD regulatory agency that has jurisdiction based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.”;
6. Subparagraph 1 201.10(B)(14) is modified by deleting “or FOOD PROCESSING PLANT”;
7. Subparagraph 1 201.10(B)(31)(c)(iii) is deleted;
8. Subparagraph 1 201.10(B)(32) is modified to read: “‘Food processing plant’ means a FOOD ESTABLISHMENT that manufactures, packages, labels, or stores FOOD for human consumption and does not provide FOOD directly to a CONSUMER.”;
9. Subparagraph 1 201.10(B)(50)(a) is modified to read: “‘Packaged’ means bottled, canned, cartoned, securely bagged, or securely wrapped.”;
10. Subparagraph 1 201.10(B)(54) is modified to read: “‘Person in charge’ means the individual present at a FOOD ESTABLISHMENT who is responsible for the management of the operation at the time of inspection.”;
11. Subparagraph 1 201.10(B)(69) is modified to read: “‘Regulatory authority’ means the Department or a local health department or public health services district operating under a delegation of authority from the Department.”;
12. Paragraph 3 202.11(C) is modified to read: “~~POTENTIALLY HAZARDOUS FOOD~~ that is cooked to a temperature and for a time specified under §§ 3-401.11–3-401.13 and received hot shall be at a temperature of 54° C (130° F) or above.”;
13. Paragraph 3 202.14(B) is modified to read: “All milk and milk products sold at the retail level in Arizona shall comply with the requirements in A.A.C. Title 3, Chapter 2, Article 8.”;
14. Paragraph 3 202.17(B) is deleted;
15. Paragraph 3 202.18(B) is deleted;
16. Paragraph 3 203.11(A) is modified to read: “Except as specified in ~~¶¶~~ (B) and (C) of this Section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale, preparation for service, or

preparation in a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.”;

17. Paragraph 3-203.12(B) is modified to read:

“(B) The identity of the source of SHELLSTOCK that are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:

(1) Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the SHELLSTOCK are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served; and

(2) If SHELLSTOCK are removed from their tagged or labeled container:

(a) Using only one tagged or labeled container at a time, or

(b) Using more than one tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:

(i) Is submitted by the LICENSE HOLDER and APPROVED as specified under § 8-103.11,

(ii) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this Section, and

(iii) Ensures that SHELLSTOCK from one tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER or prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.”;

18. Paragraph 3-301.11(B) is modified by replacing “SINGLE USE gloves” with “non-latex SINGLE USE gloves”;

19. Paragraph 3-304.12(F) is modified to read: “In a container of water if the water is maintained at a temperature of at least 54° C (130° F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).”;

20. Section 3-304.15 is modified by adding a new Paragraph (E):

“(E) Latex gloves may not be used in direct contact with FOOD.”;

21. Section 3-401.13 is modified to read: “Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 54° C (130° F).”;

22. Paragraph 3 403.11(C) is modified to read: “~~READY TO EAT FOOD~~ taken from a commercially processed, ~~HERMETICALLY SEALED CONTAINER~~, or from an intact package from a ~~FOOD PROCESSING PLANT~~ that is inspected by the ~~FOOD~~ regulatory agency that has jurisdiction over the plant, shall be heated to a temperature of at least 54° C (130° F) for hot holding.”;
23. Subparagraph 3 501.14(A)(1) is modified to read: “~~Within 2 hours, from 54° C (130° F) to 21° C (70° F); and~~”;
24. Paragraph 3 501.16(A) is modified to read: “At 54° C (130° F) or above; or”;
25. Subparagraph 3 501.16(C)(2) is modified to read: “Within 10 years of the adoption of this Code, the ~~EQUIPMENT~~ is upgraded or replaced to maintain ~~FOOD~~ at a temperature of 5° C (41° F) or less.”;
26. Section 3 502.11 is modified by deleting “~~custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT;~~”;
27. Paragraph 3 701.11(C) is modified by replacing “~~who has been restricted or excluded as specified under § 2 201.12~~” with “~~who has any of the conditions that require reporting to the PERSON IN CHARGE under § 2 201.11 or who has been excluded by the REGULATORY AUTHORITY under the communicable disease rules at 9 A.A.C. 6~~”;
28. Subparagraph 4 602.11(D)(7) is modified by replacing “~~60° C (140° F)~~” with “~~54° C (130° F)~~”;
29. Section 5 101.13 is modified to read: “~~BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources, in accordance with LAW.~~”;
30. Paragraph 5 501.116(A) is modified by replacing “~~§ 5 402.14~~” with “~~§§ 5 402.13 and 5 403.11~~”;
31. Section 6 501.116 is added to read:  
“6 501.116 Vending Machine Signs.  
The LICENSE HOLDER for a ~~VENDING MACHINE~~ shall affix to the ~~VENDING MACHINE~~ a permanent sign that includes:  
1. A unique identifier for the ~~VENDING MACHINE~~, and  
2. A telephone number for ~~CONSUMERS~~ to contact the ~~LICENSE HOLDER~~.”;
32. Paragraph 8 101.10(A) is modified by deleting “~~, as specified in § 1 102.10~~”;
33. Paragraph 8 201.11(C) is modified by replacing “~~as specified under ¶ 8 302.14(C)~~” with “~~as described in R9 8 103(A)(6) (7)~~”;

34. Paragraph 8 304.11(D) is modified to read: “Require ~~FOOD EMPLOYEE~~ applicants to whom a conditional offer of employment is made and ~~FOOD EMPLOYEES~~ to report to the ~~PERSON IN CHARGE~~ the information required under § 2-201.11”;
35. Paragraph 8 304.11(H) is modified by replacing “5 years” with “10 years”;
36. Section 8 304.20 is modified by replacing “as specified under ¶ 8 302.14(C)” with “as described in R9 8 103(A)(6)-(7)”;
37. Section 8 402.11 is modified by adding the following at the end of the Section: “The Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department shall comply with A.R.S. § 41-1009 when performing inspections.”;
38. Section 8-403.50 is modified by deleting “Except as specified in § 8-202.10,” and capitalizing “the”;
39. Section 8 404.12 is modified by adding the following at the end of the Section: “The ~~REGULATORY AUTHORITY~~ shall approve or deny resumption of operations within five days after receipt of the ~~LICENSE HOLDER’S~~ request to resume operations.”;
40. Section 8 405.11 is modified by adding the following at the end of the Section:  
“(C) The Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department shall not provide the ~~LICENSE HOLDER~~ an opportunity to correct critical Code violations or HACCP PLAN deviations after the date of inspection if the Department or the local health department or public health services district determines that the deficiencies are:  
(1) Committed intentionally;  
(2) Not correctable within a reasonable period of time;  
(3) Evidence of a pattern of noncompliance; or  
(4) A risk to any ~~PERSON~~; the public health, safety, or welfare; or the environment.  
(D) If the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department allows the ~~LICENSE HOLDER~~ an opportunity to correct violations or deviations after the date of inspection, the Department, local health department, or public health services district shall inspect the ~~FOOD ESTABLISHMENT~~ within 24 hours after the deadline for correction has expired. If the Department, local health department, or public health services district determines that the violations or deviations have not been corrected, the

~~Department, local health department, or public health services district may take any enforcement action authorized by LAW, based upon those violations or deviations.  
(E) A decision made under subparagraph 8-405.11(C) or subparagraph 8-405.11(D) by the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department is not an appealable agency action, as defined by A.R.S. § 41-1092.”;~~

41. ~~The following FC Sections are deleted:~~

- ~~a. Section 1-102.10,~~
- ~~b. Section 1-103.10,~~
- ~~c. Section 2-201.12,~~
- ~~d. Section 2-201.13,~~
- ~~e. Section 2-201.14,~~
- ~~f. Section 2-201.15,~~
- ~~g. Section 8-102.10,~~
- ~~h. Section 8-202.10,~~
- ~~i. Section 8-302.11,~~
- ~~j. Section 8-302.12,~~
- ~~k. Section 8-302.13,~~
- ~~l. Section 8-302.14,~~
- ~~m. Section 8-303.10,~~
- ~~n. Section 8-303.20,~~
- ~~o. Section 8-303.30,~~
- ~~p. Section 8-402.20,~~
- ~~q. Section 8-402.30,~~
- ~~r. Section 8-402.40,~~
- ~~s. Section 8-403.10,~~
- ~~t. Section 8-501.10,~~
- ~~u. Section 8-501.20,~~
- ~~v. Section 8-501.30, and~~
- ~~w. Section 8-501.40; and~~

42. ~~The annexes are excluded.~~

**R9-8-107. Poisonous or Toxic Materials**

The Department incorporates FC Chapter 7 in whole:

1. Part 7-1 Labeling and Identification;

2. Part 7-2 Operational Supplies and Applications; and
3. Part 7-3 Stock and Retail Sale.

**R9-8-108. Inspection Standardization and Documentation**

- A.** At each inspection, the REGULATORY AUTHORITY shall, at a minimum, inspect for compliance with each of the applicable CRITICAL ITEMS in the following categories:
1. ~~Temperature control of POTENTIALLY HAZARDOUS FOODS, as required by FC §§ 3-401.11, 3-401.12, 3-403.11, 3-501.14, and 3-501.16;~~
  2. ~~EMPLOYEE health and hygienic practices, as required by FC §§ 2-201.11, 2-301.11, 2-301.12, 2-301.14, 2-401.11, 2-401.12, 2-403.11, 3-301.11, 3-301.12, and 5-203.11;~~
  3. ~~Time as a public health control, as required by FC § 3-501.19;~~
  4. ~~FOOD condition and source, as required by FC §§ 3-101.11, 3-201.11, 3-201.12, 3-201.14, 3-201.15, 3-201.16, 3-201.17, 3-202.11, 3-202.13, 3-202.14, 3-202.15, 3-202.16, 3-202.18, 3-203.12, 5-101.11, and 5-101.13;~~
  5. ~~CONSUMER advisories, as required by FC § 3-603.11;~~
  6. ~~Contamination prevention, as required by FC §§ 3-302.11, 3-302.13, 3-302.14, 3-304.11, 3-306.13, 3-306.14, 4-601.11, 4-602.11, 4-702.11, 4-703.11, 5-101.12, 5-201.11, and 5-202.11;~~
  7. ~~Date marking and disposal of READY TO EAT FOODS, as required by FC §§ 3-501.17 and 3-501.18;~~
  8. ~~Responsibility and knowledge of the PERSON IN CHARGE, as required by FC §§ 2-101.11 and 2-102.11; and~~
  9. ~~Compliance with a HACCP PLAN or VARIANCE, as required by FC § 8-103.12;~~
- B.** The REGULATORY AUTHORITY shall document its inspection results on an inspection report form provided or approved by the Department. The inspection report form shall include the following:
1. ~~The name and address of the FOOD ESTABLISHMENT inspected;~~
  2. ~~The LICENSE number of the FOOD ESTABLISHMENT inspected;~~
  3. ~~The date of inspection;~~
  4. ~~The type of inspection;~~
  5. ~~A rating for each of the observed CRITICAL ITEMS listed in subsection (A), using a rating scheme that indicates whether the CRITICAL ITEM is met;~~
  6. ~~Space for comments, including observed violations of non CRITICAL ITEMS;~~
  7. ~~Signature and date lines for the PERSON IN CHARGE of the FOOD ESTABLISHMENT; and~~

8. ~~Signature and date lines for the inspector conducting the inspection.~~
- ~~C. The REGULATORY AUTHORITY shall also document on the inspection form the applicable CRITICAL ITEMS listed in subsection (A) that were not observed during the inspection, unless the REGULATORY AUTHORITY has a quality assurance program that has been approved by the Department under subsection (E).~~
- ~~D. If a REGULATORY AUTHORITY desires to create its own inspection form, the REGULATORY AUTHORITY may request approval of its inspection form by submitting a written request to the Department along with a copy of the inspection form for which approval is sought. The Department shall approve an inspection form if it determines that the inspection form satisfies all of the requirements of subsections (B) and (C).~~
- ~~E. A REGULATORY AUTHORITY may request approval of a quality assurance program by submitting a written request to the Department along with a description of the quality assurance program for which approval is sought.~~
- ~~1. The quality assurance program shall include the following:~~
- ~~a. A system for monitoring the inspection reports completed by each inspector every six months and comparing them to the reports of other inspectors and the REGULATORY AUTHORITY as a whole with respect to the number and types of violations documented during the same period;~~
  - ~~b. Identification of each inspector whose inspection reports are incongruous;~~
  - ~~c. Reinspection of a representative sample of an inspector's FOOD ESTABLISHMENTS for which inspection reports are incongruous by a quality assurance inspector within 30 days of identification of an inspector under subsection (E)(1)(b) to determine whether the incongruous reports indicate a misapplication of the rules by the inspector;~~
  - ~~d. Follow up with each inspector determined by a quality assurance inspector to have misapplied the rules:~~
    - ~~i. If the inspector has not previously required follow up, additional training by a quality assurance inspector regarding any misapplication of the rules by the inspector;~~
    - ~~ii. If the inspector has previously received additional training under subsection (E)(1)(d)(i), formal counseling by the inspector's direct supervisor and a quality assurance inspector; or~~
    - ~~iii. If the inspector has previously been formally counseled under subsection (E)(1)(d)(ii), disciplinary action; and~~

- e. ~~Consideration by the REGULATORY AUTHORITY of any misapplication of the rules by the inspector when completing the inspector's performance evaluations.~~
- 2. ~~The Department shall approve a quality assurance program if it determines that the quality assurance program satisfies all of the requirements of subsection (E)(1).~~

**R9-8-108. Compliance and Enforcement**

**A. The Department incorporates FC Chapter 8 in whole, unless otherwise specified:**

- 1. Part 8-1 Code Applicability;
- 2. Part 8-2 Plans Submission and Approval;
- 3. Part 8-3 Permit to Operate in part;
- 4. Part 8-4 Inspection and Correction of Violations in part; and
- 5. Part 8-5 Prevention of Foodborne Disease Transmission by Employees.

**B. In FC Part 8-3, the Department does not accept requirement in Section 8-303.30, Denial of Application for Permit, Notice.**

**C. In addition to the requirements in FC Part 8-3, Section 8-302.14, the Department requires an applicant for a FOOD ESTABLISHMENT application include:**

- 1. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;
- 2. Whether the applicant agrees to allow the REGULATORY AUTHORITY to submit a supplemental request for additional information or documentation in Subsection (E);
- 3. An attestation that the applicant authorizes the REGULATORY AUTHORITY to verify all information provided in the application packet; and
- 4. An applicant who operates FOOD ESTABLISHMENTS at multiple locations shall submit an application for each location.

**D. In addition to the requirements in FC Part 8-3, Section 8-303.20, the Department requires a licensee for a FOOD ESTABLISHMENT license renewal include:**

- 1. Except for a FOOD ESTABLISHMENT operated by a state prison or behavioral health facility licensed by the Department, a FOOD ESTABLISHMENT'S license number and expiration date;
- 2. Whether the applicant agrees to allow the REGULATORY AUTHORITY to submit supplemental request for additional information or documentation in Subsection (E); and
- 3. An attestation that the applicant authorizes the REGULATORY AUTHORITY to verify all information provided in the application packet.

E. In addition to FC Part 8-3, the Department adds application and license renewal time-frame requirements:

1. The overall time-frame begins, for:
  - a. An application packet, on the date a REGULATORY AUTHORITY receives the applicant's application packet.
  - b. A license renewal packet, on the date a REGULATORY AUTHORITY receives the applicant's license renewal packet.
2. An applicant and a REGULATORY AUTHORITY 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.
3. Within the administrative completeness review time-frame specified in Table 1.1, a REGULATORY AUTHORITY shall:
  - a. Provide a notice of administrative completeness to an applicant; or
  - b. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.
4. If the REGULATORY AUTHORITY provides a notice of deficiencies to an applicant:
  - a. 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 REGULATORY AUTHORITY receives the missing information or documents from the applicant;
  - b. If the applicant submits the missing information or documents to the REGULATORY AUTHORITY within the time-frame in Table 1.1, the substantive review time-frame resumes on the date the REGULATORY AUTHORITY receives the missing information or documents; and
  - c. If the applicant does not submit the missing information or documents to the regulatory authority within the time-frame in Table 1.1, the regulatory authority shall consider the application withdrawn.
5. If a REGULATORY AUTHORITY issues a license or notice of approval during the administrative completeness review time-frame, the REGULATORY AUTHORITY may choose not to issue a separate written notice of administrative completeness.
6. Within the substantive review time-frame specified in Table 1.1, a REGULATORY AUTHORITY:
  - a. Shall approve or deny:

- i. An application, or
      - ii. A license renewal;
    - b. May make one written comprehensive request for additional information or documentation; and
    - c. May make supplemental requests for additional information and documentation if agreed to by the applicant or license holder.
  - 7. If a REGULATORY AUTHORITY provides a written comprehensive request for additional information or documentation or a supplemental request to an applicant or license holder:
    - a. 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 REGULATORY AUTHORITY receives the information and documents requested; and
    - b. An applicant or license holder shall submit the information and documents listed in the written comprehensive request in a format provided by the REGULATORY AUTHORITY within 15 calendar days after the date of the written comprehensive request or supplemental request.
  - 8. The REGULATORY AUTHORITY shall issue to an applicant or license holder, as applicable:
    - a. An approval for:
      - i. An application, or
      - ii. A license renewal; or
    - b. A denial, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if an applicant or license holder:
      - i. Does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or
      - ii. Does not comply with A.R.S. § 36-136 and this Article.
- F.** In FC Part 8-4, the Department:
- 1. In Section 8-402.11 requires “The REGULATORY AUTHORITY to comply with A.R.S. § 41-1009 when performing inspections.”
  - 2. Does not accept requirements in:
    - a. Section 8-402.20, Refusal, Notification of Right to Access, and Final Request for Access;

- b. Section 8-402.30, Refusal, Reporting;
  - c. Section 8-402.40, Inspection Order to Gain Access; and
  - d. Section 8-403.10, Documenting Information and Observation.
3. In Section 8-403.50 requires “A REGULATORY AUTHORITY treat the inspection report as a public document and shall make it available for disclosure to a PERSON who requests it as provided in LAW.”
4. In Section 8-404.12 requires “A REGULATORY AUTHORITY approve or deny resumption of operations within five days after receipt of the license holder’s request to resume operations.”

**Table 1.1 Time-frames (in calendar days)**

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Review</u>	<u>Respond to Deficiency Notice</u>	<u>Substantive Review</u>
<u>Application</u>	<u>A.R.S. § 36-136(I)(4)</u>	<u>90</u>	<u>45</u>	<u>180</u>	<u>45</u>
<u>License Renewal</u>	<u>A.R.S. § 36-136(I)(4)</u>	<u>90</u>	<u>45</u>	<u>180</u>	<u>45</u>

**~~R9-8-109.~~ Cease and Desist and Abatement Repealed**

- ~~A. Engaging in any practice in violation of this Article is a public nuisance.~~
- ~~B. If the REGULATORY AUTHORITY has reasonable cause to believe that any FOOD ESTABLISHMENT is creating or maintaining a nuisance, the REGULATORY AUTHORITY shall order the LICENSE HOLDER for the FOOD ESTABLISHMENT to cease and desist the activity and to abate the nuisance as follows:~~
  - ~~1. The REGULATORY AUTHORITY shall serve upon the LICENSE HOLDER for the FOOD ESTABLISHMENT a written cease and desist and abatement order requiring the LICENSE HOLDER to cease and desist the activity and to remove the nuisance at the LICENSE HOLDER’s expense within 24 hours after service of the order. The order shall contain the following:~~
    - ~~a. A reference to the statute or rule that is alleged to have been violated or on which the order is based;~~
    - ~~b. A description of the LICENSE HOLDER’s right to request a hearing; and~~

- e. A description of the LICENSE HOLDER's right to request an informal settlement conference.
  - 2. The REGULATORY AUTHORITY shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the LICENSE HOLDER's or other party's last address of record with the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the LICENSE HOLDER or other party.
  - 3. The LICENSE HOLDER or another party whose rights are determined by the order may obtain a hearing to appeal the order by filing a written notice of appeal with the REGULATORY AUTHORITY within 30 days after service of the order. The LICENSE HOLDER or other party appealing the order shall serve the notice of appeal upon the REGULATORY AUTHORITY by personal delivery or certified mail, return receipt requested, to the office of the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the REGULATORY AUTHORITY.
  - 4. If a notice of appeal is timely filed, the REGULATORY AUTHORITY shall do one of the following:
    - a. If the REGULATORY AUTHORITY is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 has been delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
    - b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
  - 5. If no written notice of appeal is timely filed, the order shall become final without further proceedings.
- C.** The REGULATORY AUTHORITY shall inspect the FOOD ESTABLISHMENT 24 hours after service of the order to determine whether the LICENSE HOLDER has complied with the order. If the REGULATORY AUTHORITY determines upon inspection that the LICENSE HOLDER has not ceased the activity and abated the nuisance, the REGULATORY AUTHORITY shall cause the nuisance to be removed, regardless of whether the LICENSE HOLDER is appealing the order.
- D.** If the LICENSE HOLDER fails or refuses to comply with the order after a hearing has upheld the order or after the time to appeal the order has expired, the REGULATORY AUTHORITY may

~~file an action against the LICENSE HOLDER in the superior court of the county in which the violation occurred, requesting that a permanent injunction be issued to restrain the LICENSE HOLDER from engaging in further violations as described in the order.~~

**R9-8-110. Mobile Food Units**

**A.** In addition to the definitions in A.R.S. § 36-1761 and in this Article, the following definitions apply to this Section, unless otherwise specified:

1. “Commissary” means a facility that:
  - a. Is APPROVED by a REGULATORY AUTHORITY as safe and sanitary for FOOD preparation consistent with the FC and other state statutes and laws; and
  - b. Provides support and servicing activities to a mobile food unit that may include:
    - i. A cooking facility or commercial kitchen used to prepare FOOD for sale and consumption;
    - ii. A space for storing FOOD, including refrigeration, and supplies;
    - iii. A source for potable water and disposing of wastewater;
    - iv. A source for refuse disposal; and
    - v. An area for cleaning equipment or a mobile food unit.
2. “Commercially processed” means FOOD prepared or packaged by a FOOD manufacturer or licensed-permanent FOOD ESTABLISHMENT compliant with LAW.
3. “County” means a public health services district, local health department, department of environmental services, or department of environmental quality authorized to issue a mobile food unit state-license.
4. “Individually packaged” means pre-packaged FOOD that are ready for consumption and are not re-packaged prior to sale to consumers.
5. “Food manufacturer” means a business engaged in making FOOD from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating FOOD, including FOOD crops or ingredients.
6. “Other servicing area” means a facility that may provide one or more services, such as:
  - a. Disposing of refuse,
  - b. Disposing of wastewater,
  - c. Recharging potable water tank,
  - d. Disposing of excreta, or
  - e. Cleaning mobile food unit.

7. “Permit” means a document issued by a county authorizing a state-licensed mobile food unit, whose state-license was issued by a different county, to operate in the county issuing the permit according to A.R.S. § 36-1761(A)(3).
8. “Pre-packaged foods” means edible products sealed in a box, bag, can, or other container and sold to retailers or consumers in the same packaged box, bag, can, or other container.
9. “State-license” means a document:
  - a. Issued by the county where a mobile food unit’s commissary is located according to A.R.S. 36-1761(A)(3)(c); and
  - b. Authorizes the mobile food unit to dispense FOOD for immediate service and human consumption.
10. “Statewide inspection” means a visual examination of a mobile food unit to ensure that the mobile food unit meets the standards specified A.R.S. § 36-1761 and in this Article.

**B.** A mobile food vendor shall not operate a mobile food unit:

1. Without a state-license authorizing the mobile food unit to dispense FOOD for immediate service and human consumption;
2. Without a service agreement with an APPROVED commissary according to A.R.S. § 36-1761(A);
3. In another county, other than the county that issued the mobile food unit’s state-license, without a permit authorizing the mobile food unit to dispense FOOD for immediate service and human consumption; and
4. If the mobile food unit maintains or engages in a public health nuisance specified A.R.S. § 36-601.

**C.** A mobile food vendor shall for each mobile food unit:

1. Obtain a state-license that includes a statewide inspection specified in subsection (H).
2. Obtain a renewal state-license annually that includes a statewide inspection specified in subsection (H).
3. Except for the county in which a mobile food unit has a state-license, obtain a permit annually for each county where the mobile food unit operates.
4. Ensure all employees have a valid food handler card or a certificate from an accredited food handler training-provider as specified in the FC.
5. Comply with random statewide inspections at no additional cost except as provided in A.R.S. § 11-269.24.

**D.** A mobile food unit:

1. Shall display in a conspicuous location for public viewing the mobile food unit’s:

- a. State-license, and
- b. County permits, if applicable.
- 2. Shall clearly indicate on the sides or back of the exterior of the vehicle in permanent letters the name of the licensed FOOD ESTABLISHMENT.
- 3. Shall report to a commissary or other serving area, as applicable, at least every 96 hours following A.R.S. § 11-269.24 or as determined by the county in which the mobile food unit's commissary is located for receiving necessary services during operations to ensure public health and safety.
- 4. May sell a cottage FOOD prepared for commercial purposes specified in R9-8-118(B)(13).
- 5. Is not required to operate a specific distance from the perimeter of an existing commercial establishment or restaurant.
- 6. Shall operate during hours determined by the mobile food vendor.
- 7. Shall ensure toilet facilities are accessible to employees at a location where the mobile food unit is proposed to stay during all hours of operation.

**E.** A mobile food unit's state-license shall indicate the mobile food unit classification based on the type of FOOD dispensed and the amount of handling and preparation required:

- 1. Type I mobile food unit is a FOOD ESTABLISHMENT that dispenses FOOD that are commercially processed, individually PACKAGED and frozen that requires time/temperature control for safety.
- 2. Type II mobile food unit is a FOOD ESTABLISHMENT that dispenses FOOD that requires limited handling and preparation and:
  - a. Includes assemble-serve, heat-serve, and hold-serve of commercially processed FOOD;
  - b. Except for bacon-wrapped hotdogs pre-wrapped at a mobile food unit's commissary, shall not cook raw animal FOOD for service from the mobile food unit;
  - c. Shall only use produce that is commercially pre-washed or washed in advance at a commissary; and
  - d. All cooking, processing, preparing, grilling, assembling, storage, and service of any FOOD shall be conducted from the mobile food unit and commissary.
- 3. Type III mobile food unit is a FOOD ESTABLISHMENT that prepares, cooks, holds, and serves FOOD and:

- a. Includes assemble-serve, heat-serve, cook-serve, and hold-serve of commercially processed FOOD;
- b. May prepare raw animal FOOD for service from the mobile food unit; and
- c. All cooking, processing, preparing, grilling, assembling, storage, and service of any FOOD shall be conducted inside the mobile food unit and commissary.

**F.** A mobile food vendor for each mobile food unit shall have a written agreement with a commissary or other servicing area, as applicable, located in the county that issues a mobile food unit's state-license:

- 1. Is APPROVED by a REGULATORY AUTHORITY as safe and sanitary for FOOD preparation consistent with the FC and other state statutes and laws;
- 2. Has a signed agreement with a commissary that includes:
  - a. The commissary's name, address, and telephone number;
  - b. The commissary's permit number issued by a REGULATORY AUTHORITY;
  - c. The mobile food vendor's name, address, and telephone number;
  - d. The manager's name, address, and telephone number, if applicable;
  - e. A list of services to be provided to the mobile food vendor; and
  - f. The expiration date of the agreement, if applicable; or
- 3. Has a signed agreement with an other servicing area that includes:
  - a. The other servicing area's name, address, and telephone number;
  - b. The other servicing area's permit number, if applicable, issued by a REGULATORY AUTHORITY or other jurisdiction having authority to regulate the other servicing area;
  - c. The mobile food vendor's name, address, and telephone number;
  - d. The manager's name, address, and telephone number, if applicable;
  - e. A list of services to be provided to the mobile food vendor; and
  - f. The expiration date of the agreement, if applicable.

**G.** A mobile food vendor for each mobile food unit shall maintain a service log in a Department-provided format that:

- 1. Documents the type of services, specified in Subsection (E), and dates received;
- 2. Is maintained in the mobile food unit for at least a period of 30 days; and
- 3. Is made available to a REGULATORY AUTHORITY upon request.

**H.** In addition to complying with the FC incorporated by reference in this Article, a mobile food unit is required to maintain general physical and operation requirements for:

1. Installation of compressors, generators, and similar mechanical units that are not an integral part of the FOOD preparation or storage equipment;
2. Waste disposal requirements during and after operation on public or private property, which may not include the size or dimensions of any required solid waste receptacle; and
3. A mobile food unit and equipment used in the mobile food unit shall:
  - a. Be free of dirt, debris, insects, and vermins;
  - b. Be maintained in a clean and sanitary condition;
  - c. Be in good repair and maintained according to manufacturer's requirement, as applicable;
  - d. Be properly ventilated; and
  - e. Not maintain or engage a public health nuisance.

**I.** A mobile food unit statewide inspection shall ensure:

1. A Type I mobile food unit:
  - a. Has equipment, including compressors, generators, and similar mechanical units approved by the National Sanitation Foundation or American National Standards Institute;
  - b. If selling or dispensing open FOOD, has a handwashing station that:
    - i. Is at least a 5 gallon insulated container for potable water that ensures proper handwashing consistent with FC;
    - ii. Has a catch-bucket to retain waste water generated from handwashing that is 15% greater than the potable water tank; and
    - iii. Has adequate soap and paper towels for time in service; and
  - c. Does not cook, prepare, or assemble FOOD.
2. A Type II mobile food unit:
  - a. Has equipment, including compressors, generators, and similar mechanical units are approved by the National Sanitation Foundation or American National Standards Institute;
  - b. Has a potable water tank that is at least five gallons;
  - c. Has a waste water tank that is 15% greater than the potable water tank and any other applicable hot water storage or water storage capacity;
  - d. Has a handwash sink;
  - e. Has a combination mixing faucet of hot and cold water at all sinks;
  - f. Has plumbing connections;
  - g. Has a waste water tank to drain at lowest point of tank;

- h. Has a water tank with a fill connection located at the top;
  - i. Has a National Sanitation Foundation or American National Standards Institute approved FOOD grade water hose;
  - j. Has a water heater or other APPROVED hot water source; and
  - k. Has a quick-disconnect design for sewer and potable water.
3. In addition to Subsection (2)(a) through (k), a Type III mobile food unit:
- a. Has a three-compartment sink that includes:
    - i. A potable water system under pressure, supplying hot and cold water with a minimum capacity of 30 gallons permanently installed for warewashing, sanitization, and handwashing;
    - ii. A waste water capacity that is 15% greater than the potable water tank and
    - iii. A minimum flow rate of one-half gallon per minute; and
  - b. May include a FOOD preparation sink for the purpose of washing product if an additional 20 gallons of potable water is available for use.
- J.** Except for the Department, regulatory authorities through delegation in the county where a mobile food vendor’s commissary is located shall issue state licensure and statewide inspection standards adopted pursuant to this section.

**R9-8-111.** Compliance and Enforcement, Annex 1

- A.** The Department incorporates FC Annex 1 in whole, unless otherwise specified:
- 1. Section 1, Purpose;
  - 2. Section 2, Explanation;
  - 3. Section 3, Principle;
  - 4. Section 4, Recommendation; and
  - 5. Section 5, Parts in part.
- B.** In Annex 1, Section 5, the Department does not accept Part 8-911.10(B).
- C.** In addition to Annex 1, Section 5, the Department adds licensure suspension or revocation requirements that:
- 1. A REGULATORY AUTHORITY may suspend or revoke a FOOD ESTABLISHMENT license if the license holder:
    - a. Maintains or engages in a public health nuisance;
    - b. Falsifies records to interfere with or obstruct an investigation or regulatory process of the REGULATORY AUTHORITY; or
    - c. Provides false or misleading information to a regulatory authority.

2. A license revocation or suspension hearing shall be conducted as follows:
  - a. If a REGULATORY AUTHORITY is the Department, a hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10;
  - b. If a REGULATORY AUTHORITY is a public health district, local health department, department of environmental services, or department of environmental quality, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 or Article 10.

**D.** In addition to Annex 1, Section 5, the Department adds cease and desist requirements that:

1. If a REGULATORY AUTHORITY determines a FOOD ESTABLISHMENT is creating, maintaining, or engaging a public health nuisance the REGULATORY AUTHORITY shall serve the FOOD ESTABLISHMENT'S license holder a written cease and desist order pursuant to A.R.S. Title 36, Chapter 6, Article 1.
2. If a written notice of appeal is not provided as specified in A.R.S. § 36-601(B), the cease and desist order shall become final.

**R9-8-112.** References, Annex 2

The Department incorporates FC Annex 2 in whole:

1. Section 1, United States Code and Code of Federal Regulations;
2. Section 2, Bibliography;
3. Section 3, Principle; and
4. Section 4, Food Defense Guidance from Farm to Table.

**R9-8-113.** Public Health Reasons and Administrative Guidelines, Annex 3

The Department incorporates FC Annex 3 in whole:

1. Section 1, Purpose and Definitions;
2. Section 2, Management and Personnel;
3. Section 3, Food;
4. Section 4, Equipment, Utensils, and Linens;
5. Section 5, Water, Plumbing, and Waste;
6. Section 6, Physical Facilities;
7. Section 7, Poisonous or Toxic Materials; and
8. Section 8, Compliance and Enforcement.

**R9-8-114.** Management of Food Safety Practices, Annex 4

The Department incorporates FC Annex 4 in whole:

1. Section 1, Active Managerial Control;
2. Section 2, Introduction to HACCP;

3. Section 3, The HACCP Principles;
4. Section 4, The Process Approach - A Practical Application of HACCP;
5. Section 5, FDA Retail HACCP Manuals;
6. Section 6, Advantages of Using the Principles of HACCP;
7. Section 7, Summary;
8. Section 8, Acknowledgements; and
9. Section 9, Resources and References.

**R9-8-115.** Conducting Risk-based Inspections, Annex 5

The Department incorporates FC Annex 5 in whole:

1. Section 1, Purpose and Scope;
2. Section 2, Risk-Based Routine Inspections;
3. Section 3, What is Needed to Properly Conduct a Risk-Based Inspection;
4. Section 4, Risk-Based Inspection Methodology;
5. Section 5, Achieving On-Site and Long-Term Compliance;
6. Section 6, Inspection Form and Scoring;
7. Section 7, Closing Conference; and
8. Section 8, Summary.

**R9-8-116.** Food Processing Criteria, Annex 6

The Department incorporates FC Annex 6 in whole:

1. Section 1, Introduction;
2. Section 2, Reduced Oxygen Packaging; and
3. Section 3, Smoking and Curing.

**R9-8-117.** Model Forms, Guides, and Other Aids, Annex 7

The Department incorporates FC Annex in whole:

1. Section 1, Employee Health Information;
2. Section 2, Adoption Information; and
3. Section 3, Summary Information.

**R9-8-102, R9-8-118.** **Applicability Exempt from Requirements and Inspections**

- A. Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.
- B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:
  1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
  2. Group homes, as defined in A.R.S. § 36-551;

3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
12. ~~Food or drink~~ FOOD that is:
  - a. Served at a noncommercial social event, such as a potluck;
  - b. Prepared at a cooking school if:
    - i. The cooking school is conducted in the kitchen of an owner-occupied home,
    - ii. Only one meal per day is prepared and served by students of the cooking school,
    - iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
    - iv. The students of the cooking school are provided with written notice that the ~~food~~ FOOD is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
  - 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. A demonstration of FOOD preparation or cooking class offered by:
    - i. A culinary school or educational institution and all FOOD prepared is consumed by attending students;
    - ii. A school or business and samples are not offered for human consumption; and
    - iii. A business where an individual provides, prepares, cooks, and consumes their own FOOD.
  - e.f. Offered at a child care facility and limited to commercially pre-packaged ~~food~~ FOOD that is not potentially hazardous and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
  - f.g. Offered at locations that sell only commercially pre-packaged ~~food or drink~~ FOOD that is not potentially hazardous;
13. A cottage ~~food~~ FOOD product, as defined in A.R.S. § 36-136(Q), prepared for commercial purposes that:
- a. Is not potentially hazardous as defined in A.R.S. § 36-136(I)(4)(g); or
  - b. Is not a ~~food~~ FOOD that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
  - c. Is prepared in the kitchen of a home by a food preparer or under the supervision of an individual who:
    - i. Has a certificate of completion from completing a food handler training course from an accredited program;
    - ii. Maintains an active certification of completion; and
    - iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and
  - d. Is ~~packaged~~ PACKAGED at the home with an attached label that includes:
    - i. The name, and registration number of the food preparer registered with the Department as specified in subsection (D);
    - ii. A list of the ingredients in the cottage ~~food product~~ FOOD;
    - iii. The date the cottage ~~food product~~ FOOD was prepared; and
    - iv. The statement: This product was produced in a home kitchen that may

process common ~~food~~ FOOD allergens and is not subject to public health inspection; and

- v. If applicable, a statement that the cottage ~~food-product~~ FOOD was prepared in the home kitchen of a facility for individuals with developmental disabilities.

14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.

**C.** A food preparer who meets the requirements in subsection (B)(13) is authorized to prepare cottage ~~food-products~~ FOOD for commercial purpose.

**D.** To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:

1. Complete a food handler training course from an accredited program;
2. Register with the Department by submitting:
  - a. An application in a Department-provided format that includes:
    - i. The food preparer's name, address, telephone number, and e-mail address;
    - ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and e-mail address;
    - iii. The address, including the county, of the home where the cottage ~~food-product~~ FOOD is prepared;
    - iv. Whether the home where the cottage ~~food-product~~ FOOD is prepared is a facility for developmentally disabled individuals; and
    - v. A description of each cottage ~~food-product~~ FOOD prepared for commercial purposes;
  - b. A copy of the food preparer's certificate of completion for the completed food handler training course;
  - c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and
  - d. An attestation in a Department-provided format that the food preparer:
    - i. Has reviewed Department-provided information on ~~food~~ FOOD safety and safe ~~food~~ FOOD handling practices;
    - ii. Based on the Department-provided information, believes that the cottage ~~food-product~~ FOOD prepared for commercial purposes is not potentially hazardous or is not a ~~food~~ FOOD that requires time or temperature

control for safety to limit pathogenic microorganism growth or toxin formation; and

- iii. Includes the food preparer's printed name and date.
3. Maintain an active certification of completion for the completed food handler training course;
4. Renew the registration in subsection (D)(2) every three years;
5. Submit any change to the information or documents provided according to subsection (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and
6. Display the food preparer's certificate of registration when operating as a temporary ~~food establishment~~ FOOD ESTABLISHMENT and selling cottage ~~food products~~ FOOD.

**R9-8-119. Manufactured Food Plants**

**A.** The following definitions apply to this Section, unless otherwise specified:

1. "Consumer" means a person who:
  - a. Is a member of the public.
  - b. Takes possession of FOOD.
  - c. Is not functioning in the capacity of an operator of a manufacture food plant, and
  - d. Does not offer the FOOD for resale.
2. "FOOD PROCESSING PLANT" means a commercial operation that:
  - a. Manufactures, packages, labels, or stores FOOD for human consumption;
  - b. Provides FOOD for sale or distribution to other business entities such as FOOD ESTABLISHMENTS and retailers; and
  - c. Does not provide FOOD directly to a consumer.

**B.** In FC Part 3-2, Subpart 3-202, the Department:

1. In paragraph 3-203.11(A) requires "Except as specified in ¶¶ (B), (C), and (D) of this Section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale, preparation for service, or preparation in a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.
2. In paragraph 3-203.12(C) requires "The identity of the source of SHELLSTOCK that are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:
  - a. Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the

SHELLSTOCK are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served; and

- b. If SHELLSTOCK are removed from their tagged or labeled container:
- i. Using only one tagged or labeled container at a time, or
  - ii. Using more than one tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:
    - (a) Is submitted by the license holder and APPROVED as specified under § 8-103.11,
    - (b) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this Section, and
    - (c) Ensures that SHELLSTOCK from one tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER or prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.

**TITLE 9. HEALTH SERVICES**

**CHAPTER 8 . DEPARTMENT OF HEALTH SERVICES**

**FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

**ARTICLE 1. FOOD AND DRINK**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**2020**

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

## TITLE 9. HEALTH SERVICES

### CHAPTER 8. DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

#### ARTICLE 1. FOOD AND DRINK

**1. An identification of the rulemaking:**

Arizona Revised Statutes (A.R.S.) § 36-136(I)(4) requires the Department to “prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms.” Statutes further requires the rules adopted by the Department to “prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation” of food and drink and include minimum standards for the sanitary facilities and conditions that are to 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 are to “prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported.” In addition, the Department is responsible “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.”

Additional statutes that address specific areas of food and drink are specified in A.R.S. § 36-136(I)(5), and A.R.S. § 36-136(I)(7). A.R.S. § 36-136(I)(5) requires the Director to prescribe “reasonably necessary measures to assure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources” approved by the Arizona Department of Agriculture and “are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms.” A.R.S. § 36-136(I)(7) requires the Department to “define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms.”

In 2001, the Department amended the rules in Article 1, Food and Drink, in a notice of final rulemaking published in the *Arizona Administrative Register* (A.A.R.) at 7 A.A.R. 1719, effective October 3, 2001. In the rulemaking, the Department incorporated by reference the United States Food and Drug Administration (FDA) publication, Food Code: 1999 Recommendation of the United States Public Health

Services, Food and Drug Administration; added an applicability section to specify the categories of facilities and foods that are exempt from the Article; and changed the definition “food processing plant” to include “food establishments.” Only three of the rules have been amended since adopted in 2010. Sections R9-8-101 and R9-8-102 were amended in 2003 at 9 A.A.R. 317; 2012 at 17 A.A.R. 2608; 2018 at 24 A.A.R. 1817; and 2019 at 25 A.A.R. 1547. Sections R9-8-102 and R9-8-107 were amended in 2006 at 12 A.A.R. 2768. The majority of the changes were made to update definitions and add or clarify other types of facilities and individuals who are exempt from the food and drink rules.

In this 2020 rulemaking, the Department has updated the current 1999 Food Code incorporated by reference to the 2017 Food Code to ensure consistency throughout the state and at the request of counties. Additionally, the Department also added the 2017 Food Code Annexes; added a new Section for licensing mobile food units specified in Laws 2018, Ch. 218; combined and moved the manufactured food plant requirements to a new Section; and updated facilities and individuals who are exempt to clarify requirement for the “demonstration of food preparation.” The proposed rules conform to the rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

**2. An identification of the persons, who will be directly affected by, bears the costs of, or directly benefits from the proposed rulemaking:**

- a. The Department
- b. Counties
- c. Privately owned business
- d. Consumers include:
  - Individuals who purchase foods at a restaurant that holds a food establishment license
  - Individuals who are a client, patient, or resident in a health care institution that is required to have a licensed food establishment provide food services
  - Individuals who have children enrolled in a child care facility required to have a licensed food establishment provide meals to enrolled children
- e. The public

**3. Cost/benefit analysis:**

This analysis covers cost and benefit associated with the rule changes. The annual cost and revenue changes are designated as none-to-minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or more in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefits	Decreased Cost/ Increased Benefits
<b>A. State and Local Government Agencies</b>			
The Department	<p>Requires technical resources to amend the rules:</p> <ul style="list-style-type: none"> <li>• Revised Article 1 Section format and order to make consistent with the 2017 Food Code</li> <li>• Added new Sections for 2017 Food Code Chapters 1 through 8</li> <li>• Added new Sections for 2017 Food Code Annexes 1 through 7</li> <li>• Updated and clarified compliance and enforcement requirements</li> <li>• Updated time-frames requirements</li> <li>• Added new Section for mobile food units</li> <li>• Added a new Section for manufactured food plants</li> </ul>	Moderate	Significant
Counties	<p>Revised Article 1 Section format and order to make consistent with the 2017 Food Code</p> <p>Added new Sections for 2017 Food Code Chapters 1 through 8</p> <p>Added new Sections for 2017 Food Code Annexes 1 through 7</p> <p>Added certified food protection manager (CFPM)</p> <p>Added new Section for mobile food units</p> <p>Updated and clarified compliance and enforcement requirements</p> <p>Updated time-frames requirements</p>	<p>Minimal</p> <p>Minimal</p> <p>Minimal</p> <p>None</p> <p>Moderate</p> <p>None</p> <p>None</p>	<p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p>

	Added a new Section for manufactured food plants	None	None
<b>B. Privately Owned Businesses</b>			
Food Establishments	Revised Article 1 Section format and order to make consistent with the 2017 Food Code	None	Significant
	Added new Sections for 2017 Food Code Chapters 1 through 8 and certified food protection manager	Minimal	Significant
	Added new Sections for 2017 Food Code Annexes 1 through 7	None	Significant
	Updated and clarified compliance and enforcement requirements	None	Significant
	Updated time-frames requirements	None	Significant
	Added new Section for mobile food units	Minimal	Significant
<b>C. Consumers</b>			
Individuals who purchase food from a licensed food establishment	Updated 2017 Food Code requirements	None	Significant
	Added new a Section for mobile food units	None	Moderate
Individuals who are a client, patient, or resident in a health care institution required to have a licensed food establishment provide food service	Updated 2017 Food Code requirements	None	Significant
Individuals who have children enrolled in a child care facility required to have a licensed food establishment provide meals to enrolled children	Updated 2017 Food Code requirements	None	Significant
General public	Updated 2017 Food Code requirements	None	Significant
	Added new a Section for mobile food units	None	Moderate

- **The Department**

The Department and health departments or environmental health departments of Arizona’s counties use these rules in conjunction with county codes for licensing application approval and conducting inspections to license food establishments. In 2019, there were 37,029 food establishments and 9,809 temporary food establishments licensed in Arizona. The Department and county sanitarians conducted 71,037 route food safety-related inspections and re-inspections. Additionally, sanitarians conducted 9,162 complaint investigations related to food-borne and non-food-borne illness, which resulted in 817 compliance proceedings. The Department renewed the delegation agreements with the 15 counties in 2016 and 2017, and the renewed delegation agreements includes licensing and inspections of new food establishments; renewal of licensing and inspections for the existing 37,029 food establishments; and the 9,809 temporary food establishments licensed in 2019. Through these delegation agreements, the county health departments and environmental health departments also play a major role in providing education and compliance assistance to food establishments and enforcement duties as required. The Department and Arizona counties through the delegation agreements ensure that Arizonans are protected from foodborne illness and foodborne disease.

The Department anticipates that the cost associated with this rulemaking to be at most moderate for a rule analyst and program staff to review and amend current Article 1 rules and to meet with stakeholders to ensure that the Department is aware of any concerns stakeholders may have, and if appropriate, change the draft rules. 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 understandability. In Article 1, the Department restructured rules to make Sections consistent with the 2017 Food Code and changed Article 1 title to “Food Establishments” from “Food and Drink.” Changing the Article 1 title is necessary to eliminate potential confusion that may occur after the new rules for manufactured food processing plants are promulgated, presumably, later this year. The new manufactured food processing plants rules will be published in the Arizona Administrative Register at 9 A.A.C. 8, Article 9.

Additionally, to prepare for the new manufactured food processing plant rules, the Department added R9-8-119 and moved requirements related to manufactured food plants from current R9-8-107 to new R9-8-119. It is the Department’s intent to repeal or allow new R9-8-119 to expire after 9 A.A.C. 8, Article 9 is published. Also, current R9-8-102, Applicability, was moved to new R9-8-118 to allow the organization of the Article 1 Sections to be consistent with the 2017 Food Code Chapters and Annexes. The Department expects that consolidating, restructuring, and deleting antiquated Sections and requirements will provide a significant benefit to the Department for having rules that clearer, more concise, and more effective.

The Department amended R9-8-101 through R9-8-108 and repealed R9-8-109 to clarify and make consistent with the 2017 Food Code Chapters 1 through 8. The new R9-8-101 through R9-8-108, by incorporation, identifies with the 2017 Food Code structural nomenclature by Chapter, Part, Subpart, Section, Paragraph, and Subparagraph. Each rule also specifies whether a Chapter is incorporated in whole or in part, and if in part, the Department specifies the Part being changed and states its action whether the Part is being modified, added, deleted, or whether the Department requires, does not except, or does not uses. Further, the Department moved requirements in current R9-8-107 to new R9-8-101 through R9-8-105; current R9-8-103 through R9-8-105 to new R9-8-108; current R9-8-106 to new R9-8-111; and current R9-8-108 to new R9-8-115. Some of the changes include deleting four antiquated definitions in R9-8-101, moving other definitions in R9-8-101 to new R9-8-101(D). Other (new) definitions for time-frames and mobile food units were also added, as well as, nine definitions from current R9-8-107. Relocating requirements in R9-8-107 to Sections that correspond with the 2017 Food Code Chapters and Parts will most likely decrease cost by eliminating confusion that could occur when referencing Article 1 requirements to the 2017 Food Code. The Department expects having rules that are easily referenced to the 2017 Food Code will be a significant benefit to the Department, specifically, Department sanitarians and other program members responsible for interpreting the 2017 Food Code, the rules, and state statutes when responding to complaints of non-compliance and inspections required by the initial application and renewal application processes.

The updated requirements in amended R9-8-108, Time-frames, are complainant with A.R.S. § 41-1072, consistent with 2017 Food Code formatting, and consolidated to include approvals for initial and renewal applications. The approvals for variances, plans and specifications, and HACCP (hazard analysis and critical control points) plans were removed from Table 1.1, since the approvals are part of initial applications and renewal applications. In addition, the approval of inspection forms has also been removed from Table 1.1, and instead, all inspectors will use the inspection form specified 2017 Food Code, Annex 5. The Department anticipates that having all counties using the same inspection form will significantly increase benefits resulting from having consistent-higher sanitary and safety standards statewide and will reduce burdens for counties who permit mobile food units to provide food services in their county. In accordance with Laws 2018, Ch. 286, the Department added a new Section, R9-8-110, for mobile food vendors and mobile food units. Current Article 1 rules and the 1999 Food Code provide licensure of food establishments whether “in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.” As such, by delegation county health departments currently license mobile food units. Laws 2018, Ch. 286 establishes responsibilities for mobile food vendors and adds licensing requirements that: (1) allow mobile food units to obtain a state-license that includes a statewide inspection and (2) permit

mobile food units to obtain a food establishment permits from another counties allowing mobile food units to expand where food services may be provided. The Department anticipates that clarifying time-frames will not cause the Department to incur additional costs. The Department anticipates that consolidating and clarifying the time-frame requirement will provide a significant benefit the Department by having clearer and more understandable rules. Likewise, the Department does not expect to incur any additional costs for adding requirements for mobile food vendors and mobile food units and rather anticipates a significant benefit for having requirements that will assist mobile food units to reduce food-borne disease and illnesses resulting increased public health and safety.

The Department added new R9-8-111 through R9-8-117 to clarify and make consistent with the 2017 Food Code Annexes. New R9-8-111 through R9-8-117, by incorporation, also identifies the 2017 Food Code Annexes' structural nomenclature by Annexes, Parts, Subparts, Sections, Paragraphs, and Subparagraphs. Each rule identifies whether an Annex is incorporated in whole or in part and if in part, specifies whether a requirement is modified, deleted, or required. Current R9-8-106, Licensing Suspension or Revocation, and R9-8-109, Cease and Desist and Abatement, requirements were consolidated and moved to new R9-8-111, Compliance and Enforcement, Annex 1. The Department does not expect to incur any costs for requirements related to the 2017 Food Code Annexes and anticipates that the Department may receive a significant benefit for having all counties complying with the 2017 Food Code Annexes. Lastly, the Department added a new Section, R9-8-119, for manufactured food plants requirements. The requirements in R9-8-119 were previously located in old R9-8-107 and are specific to manufactured and retail foods. The Department is currently drafting requirements for Manufactured Food Regulatory Program in A.A.C. Title 9, Chapter 8, Article 9. It is the Department's intent to allow requirements in R9-8-119 to expire after new A.A.C. Title 9, Chapter 8, Article 9 rules are approved and published in the Arizona Administrative Register. The Department does not expect to incur any additional costs or benefits related to this change. The amended rules significantly increase the health and safety of Arizonans.

- **Counties**

In 2019 Arizona's 15 counties, under delegation agreement with the Department, licensed over 37,000 food establishments for initial, renewal, and temporary licensure, provided over 71,000 food establishment inspections and re-inspections, and responded to over 9,100 complaints, including foodborne illness, related to a food establishment's potential violation of Arizona laws. The counties employ an estimated 200 sanitarians who provide food establishment inspections and respond to all public nuisances according to A.R.S. 36-601. The Department is aware that not all counties are using the 1999 Food Code. The Department reports that one county has adopted the 2009 Food Code, five counties

have adopted the 2013 Food Code, and one county has already adopted the 2017 Food Code. Additionally, in the 2016 Food and Drink Five-year-review Report (Report), the Department reported receiving a written comment of the rules expressing concern that Article 1 rules “still incorporates by reference the 1999 FC, rather than the most recent version of the FC.” The Department believes that the written comment identified in the Report is addressed in this rulemaking.

The Department anticipates that the counties will receive a significant benefit from having rules that not only incorporate by reference the 2017 Food Code, Chapters 1 through 8, previously in R9-8-107, but also incorporate by reference the 2017 Food Code Annexes 1 through 7, new Sections R9-8-111 through R9-8-117. The Department consolidated and restructured the requirements in R9-8-108 and made consistent with 2017 Food Code Annexes, and anticipates that the amended and new Sections will most likely provide a significant increase in the effectiveness and understandability of the rules. Further, in structuring Article 1 Sections consistent with 2017 Food Code Annexes, the Department increases rules’ conciseness by specifying whether regulations and requirements are in whole or in part, and if in part, whether the Department is adding, deleting, or modifying a regulation or requirement. Amended Article 1 ensures that all counties are licensing, inspecting, and enforcing food establishment requirements consistently across Arizona. The Department expects having rules that are easily referenced to the 2017 Food Code will be a significant benefit to the counties, specifically, sanitarians responsible for cross-referencing and implementing the 2017 Food Code, the rules, and state statutes when citing a non-compliance discovered during an application inspection or an investigation prompted by a complaint received from the public. The amended rules significantly increase the health and safety of Arizonans.

The Department anticipates that some counties complying with current rules, including 1999 Food Code, may incur a minimal cost for updating licensing processes, forms, and possible some training for employees. Additionally, the amended rule in R9-8-102(A)(1) may also provide a significant benefit for counties by requiring food establishments to have a certified food protection manager (CFPM) on the premises at all time. The addition of the CFPM regulation in the 2017 Food Code, based on data collected by the FDA, will most likely result in fewer priority items out of compliance. FDA research shows that the presence of a CFPM is associated with improved food safety knowledge and inspection scores found that the major difference between outbreak and non-outbreak food establishments was the presence of a CFPM. Fewer outbreaks mean fewer burdens placed on counties’ resources. The Department anticipates that counties will not incur any costs for requiring food establishments to comply with the CFPM requirement.

The Department anticipates that having new requirements in R9-8-110 for mobile food units may reduce burden for the counties by: (1) adding a definition subsection with terms specific to state mobile food

units, including “state-license,” “permit,” and “commissary” and (2) clarifying the three types of mobile food units, as well as (3) specifying requirements for mobile food vendors and commissary written agreements. Having these mobile food unit requirements allow the counties to spend less time responding to mobile food unit inquires, and rather use their resources to address other matters related to enforcing non-compliances. The requirements in R9-8-110 may also increase some counties’ revenue based on the number of mobile food unit permits issued by a county to mobile food units’ wanting to provide food serves in their county. However, the Department expects some counties could incur a one-time moderate cost for establishing administrative processes and forms for issuing mobile food unit permits, in addition to state-licenses. The Department does not expect that counties will incur additionally costs for training sanitarians or other employees, since the counties are currently licensing mobile food units in their county and the administrative processes and forms for out-of-county permits are expected to be very similar.

The Department expects that the requirements changed in old R9-8-106, now R9-8-111, for compliance and enforcement requirements will mostly likely not increase costs for the counties, and since the requirements have been updated and simplified, the Department anticipates the counties will experience a significate benefit for having rules that are consistent with state statutes, clearer, and effective. Likewise, the Department expects that the requirements changed in old R9-8-104, Time-frames, now R9-8-108, will not increase costs for the counties and rather will most likely provide a significant benefit to the counties by removing requirements that are “more associated with the delegation of authority” than the actual approvals subject to the provisions of A.R.S. Title 41, Chapter 6, Article 7.1” as indicated in the Report.

Lastly, new R9-8-119 contains some requirements from old R9-8-107 and adds definition “consumer” and “food processing plant.” These definitions clarify the difference between manufacture foods and food establishments and allow the counties to continue regulating manufactured foods plants until the new rules in A.A.C. Title 9, Chapter 8, Article 9 for the Manufactured Food Regulatory Program are approved the Governor’s Regulatory Review Council. The Department anticipates that the counties will continue to enforce the rules as before and the requirements in R9-8-119 for manufactured food plants will mostly likely not have an affect on the counties.

- **Food Establishments**

Food establishments include restaurants and other small businesses that provide licensed food services on their premises, such as retail stores, gas stations, and licensed health care institutions. The Department expects that food establishments may receive a significant benefit for having all counties complying with one version of the FDA Food Code (2017), particularly, those licensees who have multiple food establishments located in multiple counties and are currently required to follow different versions of the Food Code depending on the county and a food establishment location. The Department anticipates that

food establishments may receive a significant benefit for having rules that not only incorporates by reference the 2017 Food Code, Chapters 1 through 8, but also incorporates by reference the 2017 Food Code Annexes 1 through 7, new Sections R9-8-111 through R9-8-117. Further, in structuring Article 1 Sections consistent with 2017 Food Code Annexes, the Department increases rules conciseness by specifying whether regulations and requirements are in whole or in part, and if in part, whether the Department is adding, deleting, or modifying a regulation or requirement. The Department anticipates that some food establishments may incur a minimal costs related to the rulemaking for a new requirement specific in R9-8-102(A)(1) requiring food establishments to have a CFPM on the premises at all time.

The Department obtained food protection manager certification (FPMC) information from ServSafe, a nationally recognized testing organization, and an association with the National Restaurant Association Education Foundation. A food establishment employee wishing to obtain a certification as a food protection manager are required to complete four hours of training and pass a two-hour written examination. The cost of training and examination is \$139 if provided by ServSafe. A FPMC issued by ServSafe is valid for five years. The Department estimates that the cost to an employee to obtain a FPMC would be nominal based on the cost and benefit analysis in Paragraph 3. The cost of training and examination is \$139 and when divided by a 5-year certification period, the yearly cost is \$27.80. The cost could be greater if an employee loses wages for hours not worked due to time taken for completing the training and examination. Lost wages for an employee who earns \$12 an hour and misses 8 hours of work is \$96 and when divided by the 5-year certificate period, the additional yearly cost of \$19.20. Hence, an employee who assume the cost of training, examination, and lost wages would incur a total cost of \$235 or \$47 yearly. A yearly expense of \$47 is less than 5% of the \$1,000 or less minimal cost/benefit analyst in Paragraph 3. The Department expects that the cost for testing and examination is nominal for both an employee or a food establishment who choose to cover FPMC costs for an employee. The Department also anticipates that a food establishment should receive significant benefit for having a CFPM on the premises at all time. As the FDA has reported when a CFPM is present, fewer primary out of compliances occur and the presence of a CFPM is associated with improved food safety knowledge resulting in higher inspection scores that are related to major difference between outbreak and not-outbreaks in food establishments.

The Department anticipates that the requirements in amended R9-8-108, Compliance and Enforcement, previously R9-8-103, Food Establishment License Application, and R9-8-104, Time-frames; and requirements in new R9-8-111, Compliance and Enforcement, Annex 1, will mostly likely not increase costs for food establishments. The Department anticipates that the new updated requirements should provide a significate benefit to food establishments. The amended and new requirements are consistent

with state statutes, clearer, and more effective by removing antiquated approvals and decreasing the substantive review time-frame without increasing the overall time-frame. In addition, the new requirements in R9-8-108 were simplified by combining previous R9-8-103 and R9-8-104; providing an additional benefit to food establishments for having more concise and understandable rules.

Lastly, the Department does not expect that the new requirements for mobile food vendors and mobile food units will increase costs for food establishments that are “mobile,” rather the Department believes that these new requirements may increase benefits by allowing mobile food units to operate in other counties. Additionally, mobile food units operating in Arizona already comply with Article 1 requirements and counties regulations that are consistent with this rulemaking. The Department does expect that some mobile food units will pay a minimal fee for a county permit; however, increased revenues related to providing food services to a much larger population may offset the cost of the county permit. The Department anticipates that new requirements in R9-8-110 may provide a significant benefit for mobile food vendors and mobile food units.

- **Individuals who purchase food at a restaurant that holds a food establishment license**

The Department anticipates that individuals who purchase food from a restaurant, a licensed food establishment, should not incur additional costs related to the rulemaking. The Department has clarified that food establishments’ costs are not expected to increase due to the incorporation of the 2017 Food Code, specifically, the new requirement for having a CFPM present on the premises at all time and the new rule for mobile food units. Rather, individuals who purchase food from restaurants are most likely to receive a significant benefit for having the new rule that provide greater protection of foods and health safety by having a CFPM on the premises at all times. Likewise, the Department anticipates that individuals are most likely to receive a significant benefit for having food that is prepared, packaged, and served according to standards designed to protect against foodborne illness and foodborne disease outbreaks from a licensed food establishments compliant with incorporated 2017 Food Code Chapters and Annexes. The Department does not expect individuals will incur additional costs or receive greater benefits for having food establishment rules that are restructured and consolidated. In addition, the Department anticipates that individuals may receive a moderate benefit from having additional licensed food establishments available as mobile food units provide food services in other counties.

- **Individuals who are a client, patient, or resident in a health care institution required to have a licensed food establishment provide food services**

Similarly, the Department anticipates that individuals who are a client, patient, or resident in health care institutions, such as skilled nursing facilities and assisted living facilities, and who receive food services from a licensed food establishment should not incur any additional costs related to the rulemaking. The

Department has clarified that food establishments' costs are not expected to increase due to the 2017 Food Code, specifically, the new requirement for having a CFPM present on the premises at all time. The Department expects clients, patients, and residents will receive a significant benefit for having a health care institution's food establishment compliant with the new requirement to have a CFPM on duty. The Department expects that many health care institution food establishments already comply with the CFPM requirement. Additionally, the Department expects that skilled nursing facilities and assisted living facilities residents, a highly susceptible population, will receive a significant benefit for having a CFPM responsible for overseeing food services provided at their facility. Benefits include decrease risks to residents, decrease costs associated with a claim related to food services, and increase health and safety to residents. The Department anticipates that residents are likely to receive a significant benefit for having food that is prepared, packaged, and served according to standards designed to protect against foodborne illness and foodborne disease outbreaks from a licensed food establishment compliant with incorporated 2017 Food Code Chapters and Annexes.

- **Individuals who have children enrolled in a child care facility required to have a licensed food establishment provide meals to enrolled children**

The Department anticipates that individuals who have children enrolled (individuals) in a licensed child care facility that is required to ensure a licensed food establishment provides meals to the enrolled children should not incur additional costs related to the rulemaking. The Department has clarified that food establishments' costs are not expected to increase due to the 2017 Food Code, specifically, the new requirement for having a CFPM present on the premises at all time. The Department expects individuals and their enrolled children will receive a significant benefit for having meals provided by a food establishment compliant with the new requirement to have a CFPM overseeing meal preparation and food services at a licensed child care facility. Additionally, the Department considers enrolled children a vulnerable population, and as such, expects having a CFPM to be an even greater benefit than not having a CFPM at all. The Department anticipates that enrolled children are likely to receive a significant benefit for having food prepared, packaged, and served according to standards designed to protect against foodborne illness and foodborne disease outbreaks from a licensed food establishment compliant with incorporated 2017 Food Code Chapters and Annexes.

- **General Public**

The Department anticipates that the public, who purchase food from a licensed food establishment, may receive a significant benefit for having food from licensed food establishments that complies with food establishment requirements that reduce foodborne illness and foodborne disease outbreaks. The Department also anticipates that the public may receive a moderate benefit from having additional

licensed food establishments available as counties permit mobile food units from other counties to provide food services in their county. The Department expects that the general public will not incur additional costs for foods purchased from a food establishment compliant with rulemaking, since the rulemaking does not require food establishments to incur considerable costs for making any substantial changes related to how food services are provided, nor does the rulemaking require food establishments to hire additional employees. The Department believes the public will receive a significant benefit for having rules that ensure maximum protection to public health and safety for all Arizonans.

**4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking.**

The Department does not anticipate that the rulemaking will have an impact on public or private employment, since the new and amended rules do not require businesses, agencies, or political subdivisions to employ additional personnel to ensure compliance with the new requirements.

**5. A statement of the probable impact of the rules on small businesses:**

**a. An identification of the small business subject to the rulemaking:**

Small businesses are food establishments, whether mobile, stationary, temporary, or permanent facility or location licensed by Article 1. Food establishment is defined in A.A.C. R9-8-101(C), and in general, are operations that store, prepare, vend food directly to consumers or otherwise provides food for human consumption, such as restaurants, mobile food units, satellite or catered feeding locations and vending locations.

**b. The administrative and other costs required for compliance with the rules:**

The rulemaking does not add or amend compliance requirements that impose additional administrative or others costs to small businesses. However, a small business could incur a nominal cost if the small business paid for an employee's training and examination or training, examination, and lost wages to obtain a FPMC. Estimated cost of training and examination is \$139 or, based on 5-year certification period, \$27.80 yearly. And the estimated cost of training, examination, and lost wages is \$235 or \$47 yearly. These estimated costs are less than 5% of the \$1,000 or less minimal cost and benefit analyst in Paragraph 3. The estimated cost for a small business that pays for an employee's training is nominal and not required by this rulemaking.

**c. A description of the methods that the agency may use to reduce the impact on small businesses:**

The Department knows of no other methods to further reduce the impact on small businesses.

**d. The probable costs and benefits to private persons and consumers who are directly affected by the rulemaking:**

Private persons and consumers directly affected by the rulemaking are not expected to incur any costs for foods purchased from a licensed food establishment since the rulemaking does not substantially increase food establishments' costs. For example, the rulemaking does not require food establishments to hire more employees or purchase new-expensive equipment. The rulemaking does require food establishments to have an employee who is a CFPM and, as explained in subparagraph (5)(b) above, the costs associated for having or acquiring training is nominal and are not substantial costs to be passed on to private persons and consumers. The Department does expect private persons and consumers will incur increased benefits from having licensed food establishments compliant with the rulemaking, specifically by having a CFPM on the premises that oversees preparation, storage, and serving of foods provided to private persons and consumers by adhering to the standards designed to protect against foodborne illness and foodborne disease outbreaks as incorporated by reference the 2017 Food Code.

**6. A statement of the probable effect on state revenues:**

The rulemaking does include licensing fees and does not affect state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the 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.

# Arizona Administrative CODE

9 A.A.C. 8 Supp. 19-2

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2019 through June 30, 2019

## Title 9



**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

## TITLE 9. HEALTH SERVICES

### CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

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.

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#### Questions about these rules? Contact:

Agency: Arizona Department of Health Services  
Name: Eric Thomas, Chief  
Address: ADHS, Division of Public Health Services,  
Public Health Preparedness,  
Office of Environmental Health  
150 N. 18th Ave., Suite 140  
Phoenix, AZ 95007-3248  
Telephone: (602) 364-3142 Fax: (602) 364-3146  
[E-mail: Eric.Thomas@azdhs.gov](mailto:Eric.Thomas@azdhs.gov) or  
Name: Robert Lane, Chief  
Address: ADHS, Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007  
Telephone: (602) 542-1020 Fax: (602) 364-1150  
[E-mail: Robert.Lane@azdhs.gov](mailto:Robert.Lane@azdhs.gov)

#### The release of this Chapter in Supp. 19-2 replaces Supp. 19-1, 1-40 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

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### 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](http://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](http://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 9. HEALTH SERVICES**

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

**ARTICLE 1. FOOD AND DRINK**

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**ARTICLE 18. RENUMBERED**

**ARTICLE 19. EMERGENCY EXPIRED**

## CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

**ARTICLE 1. FOOD AND DRINK****R9-8-101. Definitions**

In addition to the terms defined in the material incorporated by reference in R9-8-107, which are designated by all capital letters, the following definitions apply in this Article, unless otherwise specified:

1. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
2. "Applicant" means the following PERSON requesting a LICENSE:
  - a. If an individual, the individual who owns the FOOD ESTABLISHMENT;
  - b. If a corporation, any officer of the corporation;
  - c. If a limited liability company, the designated manager or, if no manager is designated, any member of the limited liability company;
  - d. If a partnership, any two of the partners;
  - e. If a joint venture, any two individuals who signed the joint venture agreement;
  - f. If a trust, the trustee of the trust;
  - g. If a religious or nonprofit organization, the individual in the senior leadership position within the organization.
  - h. If a school district, the superintendent of the district;
  - i. If an agency, the individual in the senior leadership position within the agency; or
  - j. If a county, municipality, or other political subdivision of the state, the individual in the senior leadership position within the county, municipality, or political subdivision.
3. "Department" means the Arizona Department of Health Services.
4. "Developmental disability" means the same as in A.R.S. § 36-551.
5. "FC" means the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified and incorporated by reference in R9-8-107.
6. "Incongruous" means inconsistent with the inspection reports of other inspectors or the REGULATORY AUTHORITY as a whole because significantly more or fewer violations of individual CRITICAL ITEMS are documented.
7. "Prepare" means to process commercially for human consumption by manufacturing, packaging, labeling, cooking, or assembling.
8. "Public health control" means a method to prevent transmission of foodborne illness to the CONSUMER.
9. "Remodel" means to change the PHYSICAL FACILITIES or PLUMBING FIXTURES in a FOOD ESTABLISHMENT'S FOOD preparation, storage, or cleaning areas through construction, replacement, or relocation, but does not include the replacement of old EQUIPMENT with new EQUIPMENT of the same type.
10. "Requester" means a PERSON who requests an approval from the REGULATORY AUTHORITY, but who is not an applicant or a LICENSE HOLDER.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 17 A.A.R. 2608, effective February 4, 2012 (Supp. 11-4).

**R9-8-102. Applicability**

- A. Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.
- B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:
  1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
  2. Group homes, as defined in A.R.S. § 36-551;
  3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
  4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
  5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
  6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
  7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
  8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
  9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
  10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
  11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
  12. Food or drink that is:
    - a. Served at a noncommercial social event, such as a potluck;
    - b. Prepared at a cooking school if:
      - i. The cooking school is conducted in the kitchen of an owner-occupied home,
      - ii. Only one meal per day is prepared and served by students of the cooking school,
      - iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
      - iv. The students of the cooking school are provided with written notice that the food is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
    - 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 onsite for immediate consumption; or
    - f. Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous;

## CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

13. A cottage food product, as defined in A.R.S. § 36-136(Q), prepared for commercial purposes that:
    - a. Is not potentially hazardous as defined in A.R.S. § 36-136(I)(4)(g); or
    - b. Is not a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
    - c. Is prepared in the kitchen of a home by a food preparer or under the supervision of an individual who:
      - i. Has a certificate of completion from completing a food handler training course from an accredited program;
      - ii. Maintains an active certification of completion; and
      - iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and
    - d. Is packaged at the home with an attached label that includes:
      - i. The name, and registration number of the food preparer registered with the Department as specified in subsection (D);
      - ii. A list of the ingredients in the cottage food product;
      - iii. The date the cottage food product was prepared; and
      - iv. The statement: This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection; and
      - v. If applicable, a statement that the cottage food product was prepared in the home kitchen of a facility for individuals with developmental disabilities.
  14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.
- C.** A food preparer who meets the requirements in subsection (B)(13) is authorized to prepare cottage food products for commercial purpose.
- D.** To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:
1. Complete a food handler training course from an accredited program;
  2. Register with the Department by submitting:
    - a. An application in a Department-provided format that includes:
      - i. The food preparer's name, address, telephone number, and e-mail address;
      - ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and e-mail address;
      - iii. The address, including the county, of the home where the cottage food product is prepared;
      - iv. Whether the home where the cottage food product is prepared is a facility for developmentally disabled individuals; and
      - v. A description of each cottage food product prepared for commercial purposes;
    - b. A copy of the food preparer's certificate of completion for the completed food handler training course;
    - c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and
    - d. An attestation in a Department-provided format that the food preparer:
      - i. Has reviewed Department-provided information on food safety and safe food handling practices;
      - ii. Based on the Department-provided information, believes that the cottage food product prepared for commercial purposes is not potentially hazardous or is not a food that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
      - iii. Includes the food preparer's printed name and date.
  3. Maintain an active certification of completion for the completed food handler training course;
  4. Renew the registration in subsection (D)(2) every three years;
  5. Submit any change to the information or documents provided according to subsections (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and
  6. Display the food preparer's certificate of registration when operating as a temporary food establishment and selling cottage food products.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 317, effective March 14, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 2768, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 17 A.A.R. 2608, effective February 4, 2012 (Supp. 11-4). Amended by final rulemaking at 24 A.A.R. 1817, with an immediate effective date of June 8, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 25 A.A.R. 1547, with an immediate effective date of June 5, 2019 (Supp. 19-2).

**R9-8-103. Food Establishment License Application**

- A.** To obtain a FOOD ESTABLISHMENT LICENSE, an applicant shall complete and submit to the REGULATORY AUTHORITY a FOOD ESTABLISHMENT LICENSE application form supplied by the REGULATORY AUTHORITY that indicates all of the following:
1. The full name, telephone number, and mailing address of the applicant;
  2. The name, telephone number, and street address of the FOOD ESTABLISHMENT;
  3. Whether the FOOD ESTABLISHMENT is mobile or stationary;
  4. Whether the FOOD ESTABLISHMENT is temporary or permanent;
  5. Whether the FOOD ESTABLISHMENT facility is one of the following:
    - a. A new construction that is not yet completed,
    - b. An existing structure that is being converted for use as a FOOD ESTABLISHMENT, or
    - c. An existing FOOD ESTABLISHMENT facility that is being remodeled;
  6. Whether the FOOD ESTABLISHMENT prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD;
  7. Whether the FOOD ESTABLISHMENT does any of the following:
    - a. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD only to order upon CONSUMER request;

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- b. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD in advance, in quantities based on projected CONSUMER demand;
  - c. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD using time alone, rather than time and temperature, as the public health control as described in FC § 3-501.19;
  - d. Prepares POTENTIALLY HAZARDOUS FOOD in advance using a multiple stage FOOD preparation method that may include the following:
    - i. Combining POTENTIALLY HAZARDOUS FOOD ingredients,
    - ii. Cooking,
    - iii. Cooling,
    - iv. Reheating,
    - v. Hot or cold holding,
    - vi. Freezing, or
    - vii. Thawing;
  - e. Prepares FOOD as specified under subsection (A)(7)(d) for delivery to and consumption at a location off of the PREMISES where prepared;
  - f. Prepares FOOD as specified under subsection (A)(7)(d) for service to a HIGHLY SUSCEPTIBLE POPULATION; or
  - g. Does not prepare FOOD, but offers for sale only pre-PACKAGED FOOD that is not POTENTIALLY HAZARDOUS FOOD; and
8. The applicant's signature and the date signed.
- B.** An applicant who operates FOOD ESTABLISHMENTS at multiple locations shall submit a completed LICENSE application for each location.
- Historical Note**
- New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).
- R9-8-104. Time-frames**
- A.** This Section applies to the Department and to a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 7.1 has been delegated by the Department.
- B.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is provided in Table 1. The applicant, LICENSE HOLDER, or requester and the REGULATORY AUTHORITY may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- C.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is provided in Table 1 and begins on the date that the REGULATORY AUTHORITY receives an application or request for approval.
1. The REGULATORY AUTHORITY shall mail a notice of administrative completeness or deficiencies to the applicant, LICENSE HOLDER, or requester within the administrative completeness review time-frame.
    - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application or request for approval.
    - b. If the REGULATORY AUTHORITY issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date that the REGULATORY AUTHORITY receives the missing information from the applicant, LICENSE HOLDER, or requester.
  2. If the REGULATORY AUTHORITY issues a LICENSE or other approval to the applicant, LICENSE HOLDER, or requester during the administrative completeness review time-frame, the REGULATORY AUTHORITY shall not issue a separate written notice of administrative completeness.
- D.** The substantive review time-frame described in A.R.S. § 41-1072 is provided in Table 1 and begins as of the date on the notice of administrative completeness.
1. The REGULATORY AUTHORITY shall mail written notification of approval or denial of the application or other request for approval to the applicant, LICENSE HOLDER, or requester within the substantive review time-frame.
  2. As part of the substantive review for a FOOD ESTABLISHMENT LICENSE, the REGULATORY AUTHORITY may complete an inspection that may require more than one visit to the FOOD ESTABLISHMENT.
  3. During the substantive review time-frame, the REGULATORY AUTHORITY may make one comprehensive written request for additional information, unless the REGULATORY AUTHORITY and the applicant, LICENSE HOLDER, or requester have agreed in writing to allow the REGULATORY AUTHORITY to submit supplemental requests for information.
    - a. The comprehensive written request regarding a FOOD ESTABLISHMENT LICENSE application may include a request for submission of plans and specifications, as described in FC § 8-201.11.
    - b. The comprehensive written request regarding a request for a VARIANCE under FC § 8-103.10 may include a request for a HACCP PLAN, as described in FC § 8-201.13(A), if the REGULATORY AUTHORITY determines that a HACCP PLAN is required.
    - c. If the REGULATORY AUTHORITY issues a comprehensive written request or a supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date that the REGULATORY AUTHORITY issues the request until the date that the REGULATORY AUTHORITY receives all of the information requested.
  4. The REGULATORY AUTHORITY shall issue a license or an approval unless:
    - a. For a FOOD ESTABLISHMENT LICENSE application, the REGULATORY AUTHORITY determines that the application for a FOOD ESTABLISHMENT LICENSE or the FOOD ESTABLISHMENT does not satisfy all of the requirements of this Article;
    - b. For a VARIANCE, the REGULATORY AUTHORITY determines that the request for a VARIANCE fails to demonstrate that the VARIANCE will not result in a health HAZARD or nuisance;

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- c. For approval of plans and specifications, the REGULATORY AUTHORITY determines that the plans and specifications do not satisfy all of the requirements of this Article;
  - d. For approval of a HACCP PLAN, the REGULATORY AUTHORITY determines that the HACCP PLAN does not satisfy all of the requirements of this Article;
  - e. For approval of an inspection form, the Department determines that the inspection form does not satisfy all of the requirements of R9-8-108(B)-(C); or
  - f. For approval of a quality assurance program, the Department determines that the quality assurance program does not satisfy all of the requirements of R9-8-108(E)(1).
5. If the REGULATORY AUTHORITY denies an application or request for approval, the REGULATORY

AUTHORITY shall send to the applicant, LICENSE HOLDER, or requester a written notice of denial setting forth the reasons for the denial and all other information required by A.R.S. § 41-1076.

- E. For the purpose of computing time-frames in this Section, the day of the act, event, or default from which the designated period of time begins to run is not included. Intermediate Saturdays, Sundays, and legal holidays are included in the computation. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**Table 1. Time-frames (in days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
FOOD ESTABLISHMENT LICENSE	A.R.S. § 36-136(H)(4)	60	30	30
Approval of VARIANCE under FC § 8-103.10	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Plans and Specifications under FC § 8-201.11	A.R.S. § 36-136(H)(4)	90	30	60
Approval of HACCP PLAN under FC § 8-201.13	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Inspection Form	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Quality Assurance Program	A.R.S. § 36-136(H)(4)	90	30	60

**Historical Note**

New Table made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-105. Issuance of License**

A FOOD ESTABLISHMENT LICENSE issued by the REGULATORY AUTHORITY shall bear the following information:

- 1. The name of the FOOD ESTABLISHMENT,
- 2. The street address of the FOOD ESTABLISHMENT,
- 3. The full name of the LICENSE HOLDER,
- 4. The mailing address of the LICENSE HOLDER, and
- 5. A unique identification number assigned by the REGULATORY AUTHORITY.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-106. License Suspension or Revocation**

A. The REGULATORY AUTHORITY may suspend or revoke a FOOD ESTABLISHMENT LICENSE if the LICENSE HOLDER:

- 1. Violates this Article or A.R.S. § 36-601, or
- 2. Provides false information on a LICENSE application.

B. A LICENSE revocation or suspension hearing shall be conducted as follows:

- 1. If the REGULATORY AUTHORITY is the Department, the hearing shall be conducted in accordance with A.R.S.

Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings;

- 2. If the REGULATORY AUTHORITY is a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 has been delegated, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings; and
- 3. For all other REGULATORY AUTHORITIES, a LICENSE revocation or suspension hearing shall be conducted in accordance with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-107. Food Safety Requirements**

A. A LICENSE HOLDER shall comply with the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified, which is incorporated by reference. This incorporation by reference

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contains no future editions or amendments. The incorporated material is on file with the Department and is available for purchase from the United States Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as report number PB99-115925, or from the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, as ISBN 0-16-050028-1; and is available on the Internet at <http://www.fda.gov>.

**B.** The material incorporated by reference in subsection (A) is modified as follows:

1. Where the term “permit” appears, it is replaced with “license”;
2. Subparagraph 1-201.10(B)(2)(a) is modified to read: “‘Food additive’ has the meaning stated in A.R.S. § 36-901(7).”;
3. Subparagraph 1-201.10(B)(2)(b) is modified to read: “‘Color additive’ has the meaning stated in A.R.S. § 36-901(2).”;
4. Subparagraph 1-201.10(B)(3) is modified to read: “‘Adulterated’ means possessing one or more of the conditions enumerated in A.R.S. § 36-904(A).”;
5. Subparagraph 1-201.10(B)(4) is modified to read: “‘Approved’ means acceptable to the REGULATORY AUTHORITY or to the FOOD regulatory agency that has jurisdiction based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.”;
6. Subparagraph 1-201.10(B)(14) is modified by deleting “or FOOD PROCESSING PLANT”;
7. Subparagraph 1-201.10(B)(31)(c)(iii) is deleted;
8. Subparagraph 1-201.10(B)(32) is modified to read: “‘Food processing plant’ means a FOOD ESTABLISHMENT that manufactures, packages, labels, or stores FOOD for human consumption and does not provide FOOD directly to a CONSUMER.”;
9. Subparagraph 1-201.10(B)(50)(a) is modified to read: “‘Packaged’ means bottled, canned, cartoned, securely bagged, or securely wrapped.”;
10. Subparagraph 1-201.10(B)(54) is modified to read: “‘Person in charge’ means the individual present at a FOOD ESTABLISHMENT who is responsible for the management of the operation at the time of inspection.”;
11. Subparagraph 1-201.10(B)(69) is modified to read: “‘Regulatory authority’ means the Department or a local health department or public health services district operating under a delegation of authority from the Department.”;
12. Paragraph 3-202.11(C) is modified to read: “POTENTIALLY HAZARDOUS FOOD that is cooked to a temperature and for a time specified under §§ 3-401.11 - 3-401.13 and received hot shall be at a temperature of 54° C (130° F) or above.”;
13. Paragraph 3-202.14(B) is modified to read: “All milk and milk products sold at the retail level in Arizona shall comply with the requirements in A.A.C. Title 3, Chapter 2, Article 8.”;
14. Paragraph 3-202.17(B) is deleted;
15. Paragraph 3-202.18(B) is deleted;
16. Paragraph 3-203.11(A) is modified to read: “Except as specified in ¶¶ (B) and (C) of this Section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale, preparation for service, or preparation in a

FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.”;

17. Paragraph 3-203.12(B) is modified to read:

“(B) The identity of the source of SHELLSTOCK that are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:

- (1) Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the SHELLSTOCK are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served; and
- (2) If SHELLSTOCK are removed from their tagged or labeled container:

- (a) Using only one tagged or labeled container at a time, or
- (b) Using more than one tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:

- (i) Is submitted by the LICENSE HOLDER and APPROVED as specified under § 8-103.11,
- (ii) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this Section, and
- (iii) Ensures that SHELLSTOCK from one tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER or prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.”;

18. Paragraph 3-301.11(B) is modified by replacing “SINGLE-USE gloves” with “non-latex SINGLE-USE gloves”;
19. Paragraph 3-304.12(F) is modified to read: “In a container of water if the water is maintained at a temperature of at least 54° C (130° F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).”;
20. Section 3-304.15 is modified by adding a new Paragraph (E):  
“(E) Latex gloves may not be used in direct contact with FOOD.”;
21. Section 3-401.13 is modified to read: “Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 54° C (130° F).”;
22. Paragraph 3-403.11(C) is modified to read: “READY-TO-EAT FOOD taken from a commercially processed, HERMETICALLY SEALED CONTAINER, or from an intact package from a FOOD PROCESSING PLANT that is inspected by the FOOD regulatory agency that has jurisdiction over the plant, shall be heated to a temperature of at least 54° C (130° F) for hot holding.”;
23. Subparagraph 3-501.14(A)(1) is modified to read: “Within 2 hours, from 54° C (130° F) to 21° C (70° F); and”;
24. Paragraph 3-501.16(A) is modified to read: “At 54° C (130° F) or above; or”;
25. Subparagraph 3-501.16(C)(2) is modified to read: “Within 10 years of the adoption of this Code, the

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- EQUIPMENT is upgraded or replaced to maintain FOOD at a temperature of 5° C (41° F) or less.”;
26. Section 3-502.11 is modified by deleting “custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT;”;
27. Paragraph 3-701.11(C) is modified by replacing “who has been restricted or excluded as specified under § 2-201.12” with “who has any of the conditions that require reporting to the PERSON IN CHARGE under § 2-201.11 or who has been excluded by the REGULATORY AUTHORITY under the communicable disease rules at 9 A.A.C. 6”;
28. Subparagraph 4-602.11(D)(7) is modified by replacing “60° C (140° F)” with “54° C (130° F)”;
29. Section 5-101.13 is modified to read: “BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources, in accordance with LAW.”;
30. Paragraph 5-501.116(A) is modified by replacing “§ 5-402.14” with “§§ 5-402.13 and 5-403.11”;
31. Section 6-501.116 is added to read:  
 “6-501.116 Vending Machine Signs.  
 The LICENSE HOLDER for a VENDING MACHINE shall affix to the VENDING MACHINE a permanent sign that includes:
1. A unique identifier for the VENDING MACHINE, and
  2. A telephone number for CONSUMERS to contact the LICENSE HOLDER.”;
32. Paragraph 8-101.10(A) is modified by deleting “, as specified in § 1-102.10,”;
33. Paragraph 8-201.11(C) is modified by replacing “as specified under ¶ 8-302.14(C)” with “as described in R9-8-103(A)(6)-(7)”;
34. Paragraph 8-304.11(D) is modified to read: “Require FOOD EMPLOYEE applicants to whom a conditional offer of employment is made and FOOD EMPLOYEES to report to the PERSON IN CHARGE the information required under § 2-201.11”;
35. Paragraph 8-304.11(H) is modified by replacing “5 years” with “10 years”;
36. Section 8-304.20 is modified by replacing “as specified under ¶ 8-302.14(C)” with “as described in R9-8-103(A)(6)-(7)”;
37. Section 8-402.11 is modified by adding the following at the end of the Section: “The Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department shall comply with A.R.S. § 41-1009 when performing inspections.”;
38. Section 8-403.50 is modified by deleting “Except as specified in § 8-202.10,” and capitalizing “the”;
39. Section 8-404.12 is modified by adding the following at the end of the Section: “The REGULATORY AUTHORITY shall approve or deny resumption of operations within five days after receipt of the LICENSE HOLDER’S request to resume operations.”;
40. Section 8-405.11 is modified by adding the following at the end of the Section:  
 “(C) The Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department shall not provide the LICENSE HOLDER an opportunity to correct critical Code violations or HACCP PLAN deviations after the date of inspection if the Department or the local health department or public health services district determines that the deficiencies are:
- (1) Committed intentionally;
  - (2) Not correctable within a reasonable period of time;
  - (3) Evidence of a pattern of noncompliance; or
  - (4) A risk to any PERSON; the public health, safety, or welfare; or the environment.
- (D) If the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department allows the LICENSE HOLDER an opportunity to correct violations or deviations after the date of inspection, the Department, local health department, or public health services district shall inspect the FOOD ESTABLISHMENT within 24 hours after the deadline for correction has expired. If the Department, local health department, or public health services district determines that the violations or deviations have not been corrected, the Department, local health department, or public health services district may take any enforcement action authorized by LAW, based upon those violations or deviations.
- (E) A decision made under subparagraph 8-405.11(C) or subparagraph 8-405.11(D) by the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department is not an appealable agency action, as defined by A.R.S. § 41-1092.”;
41. The following FC Sections are deleted:
- a. Section 1-102.10,
  - b. Section 1-103.10,
  - c. Section 2-201.12,
  - d. Section 2-201.13,
  - e. Section 2-201.14,
  - f. Section 2-201.15,
  - g. Section 8-102.10,
  - h. Section 8-202.10,
  - i. Section 8-302.11,
  - j. Section 8-302.12,
  - k. Section 8-302.13,
  - l. Section 8-302.14,
  - m. Section 8-303.10,
  - n. Section 8-303.20,
  - o. Section 8-303.30,
  - p. Section 8-402.20,
  - q. Section 8-402.30,
  - r. Section 8-402.40,
  - s. Section 8-403.10,
  - t. Section 8-501.10,
  - u. Section 8-501.20,
  - v. Section 8-501.30, and
  - w. Section 8-501.40; and
42. The annexes are excluded.
- Historical Note**
- New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2768, effective September 9, 2006 (Supp. 06-3).
- R9-8-108. Inspection Standardization and Documentation**
- A. At each inspection, the REGULATORY AUTHORITY shall, at a minimum, inspect for compliance with each of the applicable CRITICAL ITEMS in the following categories:
1. Temperature control of POTENTIALLY HAZARDOUS FOODS, as required by FC §§ 3-401.11, 3-401.12, 3-403.11, 3-501.14, and 3-501.16;

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2. EMPLOYEE health and hygienic practices, as required by FC §§ 2-201.11, 2-301.11, 2-301.12, 2-301.14, 2-401.11, 2-401.12, 2-403.11, 3-301.11, 3-301.12, and 5-203.11;
  3. Time as a public health control, as required by FC § 3-501.19;
  4. FOOD condition and source, as required by FC §§ 3-101.11, 3-201.11, 3-201.12, 3-201.14, 3-201.15, 3-201.16, 3-201.17, 3-202.11, 3-202.13, 3-202.14, 3-202.15, 3-202.16, 3-202.18, 3-203.12, 5-101.11, and 5-101.13;
  5. CONSUMER advisories, as required by FC § 3-603.11;
  6. Contamination prevention, as required by FC §§ 3-302.11, 3-302.13, 3-302.14, 3-304.11, 3-306.13, 3-306.14, 4-601.11, 4-602.11, 4-702.11, 4-703.11, 5-101.12, 5-201.11, and 5-202.11;
  7. Date marking and disposal of READY-TO-EAT FOODS, as required by FC §§ 3-501.17 and 3-501.18;
  8. Responsibility and knowledge of the PERSON IN CHARGE, as required by FC §§ 2-101.11 and 2-102.11; and
  9. Compliance with a HACCP PLAN or VARIANCE, as required by FC § 8-103.12;
- B.** The REGULATORY AUTHORITY shall document its inspection results on an inspection report form provided or approved by the Department. The inspection report form shall include the following:
1. The name and address of the FOOD ESTABLISHMENT inspected;
  2. The LICENSE number of the FOOD ESTABLISHMENT inspected;
  3. The date of inspection;
  4. The type of inspection;
  5. A rating for each of the observed CRITICAL ITEMS listed in subsection (A), using a rating scheme that indicates whether the CRITICAL ITEM is met;
  6. Space for comments, including observed violations of non-CRITICAL ITEMS;
  7. Signature and date lines for the PERSON IN CHARGE of the FOOD ESTABLISHMENT; and
  8. Signature and date lines for the inspector conducting the inspection.
- C.** The REGULATORY AUTHORITY shall also document on the inspection form the applicable CRITICAL ITEMS listed in subsection (A) that were not observed during the inspection, unless the REGULATORY AUTHORITY has a quality assurance program that has been approved by the Department under subsection (E).
- D.** If a REGULATORY AUTHORITY desires to create its own inspection form, the REGULATORY AUTHORITY may request approval of its inspection form by submitting a written request to the Department along with a copy of the inspection form for which approval is sought. The Department shall approve an inspection form if it determines that the inspection form satisfies all of the requirements of subsections (B) and (C).
- E.** A REGULATORY AUTHORITY may request approval of a quality assurance program by submitting a written request to the Department along with a description of the quality assurance program for which approval is sought.
1. The quality assurance program shall include the following:
    - a. A system for monitoring the inspection reports completed by each inspector every six months and comparing them to the reports of other inspectors and the REGULATORY AUTHORITY as a whole with respect to the number and types of violations documented during the same period;
  2. The Department shall approve a quality assurance program if it determines that the quality assurance program satisfies all of the requirements of subsection (E)(1).
- b. Identification of each inspector whose inspection reports are incongruous;
  - c. Reinspection of a representative sample of an inspector's FOOD ESTABLISHMENTS for which inspection reports are incongruous by a quality assurance inspector within 30 days of identification of an inspector under subsection (E)(1)(b) to determine whether the incongruous reports indicate a misapplication of the rules by the inspector;
  - d. Follow-up with each inspector determined by a quality assurance inspector to have misapplied the rules:
    - i. If the inspector has not previously required follow-up, additional training by a quality assurance inspector regarding any misapplication of the rules by the inspector;
    - ii. If the inspector has previously received additional training under subsection (E)(1)(d)(i), formal counseling by the inspector's direct supervisor and a quality assurance inspector; or
    - iii. If the inspector has previously been formally counseled under subsection (E)(1)(d)(ii), disciplinary action; and
  - e. Consideration by the REGULATORY AUTHORITY of any misapplication of the rules by the inspector when completing the inspector's performance evaluations.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-109. Cease and Desist and Abatement**

- A.** Engaging in any practice in violation of this Article is a public nuisance.
- B.** If the REGULATORY AUTHORITY has reasonable cause to believe that any FOOD ESTABLISHMENT is creating or maintaining a nuisance, the REGULATORY AUTHORITY shall order the LICENSE HOLDER for the FOOD ESTABLISHMENT to cease and desist the activity and to abate the nuisance as follows:
1. The REGULATORY AUTHORITY shall serve upon the LICENSE HOLDER for the FOOD ESTABLISHMENT a written cease and desist and abatement order requiring the LICENSE HOLDER to cease and desist the activity and to remove the nuisance at the LICENSE HOLDER's expense within 24 hours after service of the order. The order shall contain the following:
    - a. A reference to the statute or rule that is alleged to have been violated or on which the order is based,
    - b. A description of the LICENSE HOLDER's right to request a hearing, and
    - c. A description of the LICENSE HOLDER's right to request an informal settlement conference.
  2. The REGULATORY AUTHORITY shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the LICENSE HOLDER's or other party's last address of record with the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the LICENSE HOLDER or other party.
  3. The LICENSE HOLDER or another party whose rights are determined by the order may obtain a hearing to

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appeal the order by filing a written notice of appeal with the REGULATORY AUTHORITY within 30 days after service of the order. The LICENSE HOLDER or other party appealing the order shall serve the notice of appeal upon the REGULATORY AUTHORITY by personal delivery or certified mail, return receipt requested, to the office of the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the REGULATORY AUTHORITY.

4. If a notice of appeal is timely filed, the REGULATORY AUTHORITY shall do one of the following:
    - a. If the REGULATORY AUTHORITY is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 has been delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
    - b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
  5. If no written notice of appeal is timely filed, the order shall become final without further proceedings.
- C. The REGULATORY AUTHORITY shall inspect the FOOD ESTABLISHMENT 24 hours after service of the order to determine whether the LICENSE HOLDER has complied with the order. If the REGULATORY AUTHORITY determines upon inspection that the LICENSE HOLDER has not ceased the activity and abated the nuisance, the REGULATORY AUTHORITY shall cause the nuisance to be removed, regardless of whether the LICENSE HOLDER is appealing the order.
- D. If the LICENSE HOLDER fails or refuses to comply with the order after a hearing has upheld the order or after the time to appeal the order has expired, the REGULATORY AUTHORITY may file an action against the LICENSE HOLDER in the superior court of the county in which the violation occurred, requesting that a permanent injunction be issued to restrain the LICENSE HOLDER from engaging in further violations as described in the order.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-110. Reserved**

**R9-8-111. Repealed**

**Historical Note**

Amended effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-112. Repealed**

**Historical Note**

Former Section R9-8-112 repealed, new Section R9-8-112 adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-113. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719,

effective October 3, 2001 (Supp. 01-2).

**R9-8-114. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-115. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-116. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-117. Repealed**

**Historical Note**

Corrected Article reference (Supp. 77-3). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-118. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-119. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-120. Reserved**

**R9-8-121. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-122. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-123. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-124. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-125. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-126. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-127. Repealed**

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**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-128. Reserved**

**R9-8-129. Reserved**

**R9-8-130. Reserved**

**R9-8-131. Repealed**

**Historical Note**

Former Section R9-8-131 repealed, new Section R9-8-131 adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-132. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-133. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-134. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-135. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-136. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Amended effective August 6, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-137. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-138. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-139. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-140. Repealed**

**Historical Note**

Adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-141. Reserved**

**R9-8-142. Reserved**

**R9-8-143. Reserved**

**R9-8-144. Reserved**

**R9-8-145. Reserved**

**R9-8-146. Reserved**

**R9-8-147. Reserved**

**R9-8-148. Reserved**

**R9-8-149. Reserved**

**R9-8-150. Reserved**

**R9-8-151. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-152. Reserved**

**R9-8-153. Reserved**

**R9-8-154. Reserved**

**R9-8-155. Reserved**

**R9-8-156. Repealed**

**Historical Note**

Correction of reference from R9-1-415(B) to R9-1-415(A) (Supp. 83-3). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-157. Reserved**

**R9-8-158. Reserved**

**R9-8-159. Reserved**

**R9-8-160. Repealed**

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-161. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-162. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-163. Repealed**

**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-164. Repealed**

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**Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-165. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-166. Reserved****R9-8-167. Reserved****R9-8-168. Reserved****R9-8-169. Reserved****R9-8-170. Reserved****R9-8-171. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-172. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-173. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-174. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-175. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-176. Repealed****Historical Note**

Correction, subsection (A), reference R9-1-412(D) should read R9-1-415(B) (Supp. 83-3). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-177. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-178. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-179. Reserved****R9-8-180. Reserved****R9-8-181. Repealed****Historical Note**

Legislative enactment transferred function of meat

inspection to the Livestock Sanitary Board by Laws 1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-181 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-182. Repealed****Historical Note**

Legislative enactment transferred function of meat inspection to the Livestock Sanitary Board by Laws 1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-182 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-183. Repealed****Historical Note**

Legislative enactment transferred function of meat inspection to the Livestock Sanitary Board by Laws 1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-183 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-184. Repealed****Historical Note**

Legislative enactment transferred function of meat inspection to the Livestock Sanitary Board by Laws 1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-184 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-185. Repealed****Historical Note**

Legislative enactment transferred function of meat inspection to the Livestock Sanitary Board by Laws 1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-185 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-186. Repealed****Historical Note**

Legislative enactment transferred function of meat inspection to the Livestock Sanitary Board by Laws

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1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-186 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-187. Repealed****Historical Note**

Legislative enactment transferred function of meat inspection to the Livestock Sanitary Board by Laws 1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-187 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-188. Repealed****Historical Note**

Legislative enactment transferred function of meat inspection to the Livestock Sanitary Board by Laws 1973, Ch. 158. Responsibility for meat inspection returned to Department of Health Services by Laws 1977, Ch. 92, effective May 26, 1977. Amended as an emergency effective June 6, 1977 (Supp. 77-3). Emergency filings valid for 90 days pursuant to A.R.S. § 41-1003. New Section R9-8-188 adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-189. Repealed****Historical Note**

Adopted effective March 29, 1978 (Supp. 78-2). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2).

**R9-8-190. Reserved****R9-8-191. Repealed****Historical Note**

Repealed effective August 6, 1990 (Supp. 90-3).

**ARTICLE 2. BOTTLED WATER****R9-8-201. Definitions**

In this Article, unless the context otherwise requires:

1. "Applicant" has the same meaning as in R9-8-101.
2. "Aquifer" means a layer of underground sand, gravel or porous rock where water collects.
3. "Artesian well" means a drilled well that accesses an aquifer with a water level that stands above the bottom of the confining bed of the aquifer.
4. "Bottled water" has the same meaning as in 21 CFR 165.110(a)(1) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.
5. "Bottled water plant" means a food establishment that processes and sells bottled water.
6. "CFR" means the Code of Federal Regulations.

7. "Confining bed" means a layer of ground that resists water penetration.
8. "Department" means the Arizona Department of Health Services.
9. "Drilled well" means a hole bored into the ground to reach underground water.
10. "Food establishment" has the same meaning as in A.A.C. Title 9, Chapter 8, Article 1.
11. "Licensed laboratory" means a laboratory licensed by the Department under A.R.S. Title 36, Chapter 4.3, Article 1.
12. "Plant operator" means an individual designated by the applicant to operate a specific bottled water plant.
13. "Processes" means the steps taken to ensure source water meets the quality standards for bottled water in 21 CFR 165.110(b) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.
14. "Public water system" has the same meaning as in A.R.S. § 49-352(B)(1).
15. "Source" means an artesian well, drilled well, public water system, or spring.
16. "Source water" means water from an artesian well, drilled well, public water system, or spring.
17. "Spring" has the same meaning as "spring water" in 21 CFR 165.110(a)(2)(vi) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.

**Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Amended by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3). Section R9-8-201(4), (13) and (17) corrected to include the incorporated by reference material date (Supp. 07-2). Section amended by final expedited rulemaking at 24 A.A.R. 263, effective January 10, 2018 (Supp. 18-1).

**R9-8-202. General Requirements**

A food establishment that processes and sells bottled water in Arizona shall use a source approved by the Department.

**Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3).

**R9-8-203. Application for an Approval of a Source**

- A.** An applicant shall complete and submit to the Department, an application for an approval of a source on a form provided by the Department that includes:
  1. The name, mailing address, and telephone number of the applicant;
  2. The name, street address, and telephone number of the bottled water plant;
  3. The location of the source used at the bottled water plant;
  4. The applicant's signature; and
  5. The date the application is signed.
- B.** With the completed application, an applicant shall include test results from a licensed laboratory that has tested the bottled water according to the quality requirements for bottled water in 21 CFR 165.110(b) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Print-

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ing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.

- C. An applicant shall comply with subsections (A) and (B) for each source used at the bottled water plant.

**Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3). Section R9-8-203(B) corrected to include the incorporated by reference material date (Supp. 07-2). Section amended by final expedited rulemaking at 24 A.A.R. 263, effective January 10, 2018 (Supp. 18-1).

**R9-8-204. Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072 for the Department to act on an application for an approval of a source is 60 days. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame by no more than 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an application for an approval of a source is 30 days and begins on the date the application is received.
1. The Department shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
    - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application.
    - b. If the Department issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department receives the missing information from the applicant.
    - c. If the applicant fails to submit to the Department all the information and documents listed in the notice of deficiencies within 60 days of the date the Department mailed the notice of deficiencies, the Department deems the application for approval of a source withdrawn.
  2. If the Department issues an approval of a source to the applicant during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant.
1. The Department shall mail an approval of a source or a written notification of denial of approval to the applicant within the substantive review time-frame.
  2. If the Department issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department issues the request until the date the Department receives all of the information.
  3. If the Department denies approval of a source, the Department shall send the applicant a written notice of disapproval that lists the reasons for disapproval and all other information required in A.R.S. § 41-1076.
- D. If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department considers the next business day as the time-frame's last day.

**Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3).

**R9-8-205. Quality Testing Requirements**

- A. To maintain approval of its source, a plant operator shall have a licensed laboratory test the quality of the bottled water at the times stated in 21 CFR 129.80(g) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.
- B. A plant operator shall maintain records of the quality testing of the bottled water on the bottled water plant premises for two years from the date the bottled water is tested and ensure that the records are readily available for inspection by the Department.

**Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3). Section R9-8-205(A) corrected to include the incorporated by reference material date (Supp. 07-2). Section amended by final expedited rulemaking at 24 A.A.R. 263, effective January 10, 2018 (Supp. 18-1).

**R9-8-206. Labeling Requirements**

In addition to the labeling requirements in 9 A.A.C. 8, Article 1, a plant operator shall ensure the bottled water processed and sold is labeled according to 21 CFR 129.80(e) (2016), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the U.S. Government Printing Office, 732 N. Capitol Street, N.W. Washington, D.C. 20401-001.

**Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3). Section R9-8-206 corrected to include the incorporated by reference material date (Supp. 07-2). Section amended by final expedited rulemaking at 24 A.A.R. 263, effective January 10, 2018 (Supp. 18-1).

**R9-8-207. Repealed****Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3).

**R9-8-208. Repealed****Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3).

**R9-8-209. Repealed****Historical Note**

Adopted effective August 6, 1990 (Supp. 90-3). Section repealed by final rulemaking at 10 A.A.R. 4178, effective November 23, 2004 (Supp. 04-3).

**ARTICLE 3. PUBLIC PORTABLE TOILETS**

*Editor's Note: Former Article 3 renumbered to Title 18, Chapter 9, Article 8 (Supp. 87-3).*

**R9-8-301. Definitions**

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## In this Article:

1. "Clean" means free of dirt, litter, and the remains of something that has broken or torn into pieces.
2. "Complaint" means information indicating the need for inspection due to possible violations of this Article.
3. "Durable" means capable of withstanding expected use and remaining easily cleanable.
4. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.
5. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
6. "Leakproof" means designed and constructed to prevent a substance from escaping.
7. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing surface.
8. "Portable hand-wash station" means a transportable sink or basin with a faucet for cleaning hands that supplies water and is:
  - a. Not connected to a sewage collection system,
  - b. Connected to a leakproof tank to receive and store waste water, and
  - c. Located in a public place.
9. "Portable toilet enclosure" means a structure that is capable of being moved and that houses a public portable toilet.
10. "Public nuisance" means activities or conditions that may be subject to A.R.S. § 36-601.
11. "Public place" means all or any portion of an area, land, or structure that is open to or may be accessed by any individual.
12. "Public portable toilet" means a toilet seat and toilet, or toilet seat, toilet, and urinal that is:
  - a. Not connected to a sewage collection system,
  - b. Connected to a leakproof tank to receive and store sewage temporarily,
  - c. Located in a public place, and
  - d. Housed in a portable toilet enclosure.
13. "Public restroom" means a structure or room that:
  - a. Is not connected to living or sleeping quarters;
  - b. Contains a lavatory and water closet or a lavatory, water closet, and urinal connected to a sewage collection system; and
  - c. Is located in a public place.
14. "Refuse" means the same as in A.A.C. R18-13-302.
15. "Regular basis" means at recurring, fixed, or uniform intervals.
16. "Regulatory authority" means:
  - a. The Arizona Department of Health Services; or
  - b. One of the following entities as specified in A.R.S. § 36-136(E):
    - i. A local health department;
    - ii. A county environmental department; or
    - iii. A public health services district.
17. "Responsible person" means an individual, partnership, corporation, association, governmental subdivision, state agency, or a public or private organization of any character that owns or manages the direct use of a public portable toilet within the state.
18. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.
19. "Sewage" means the waste from a toilet, urinal, sink, and portable hand-wash station.
20. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.
21. "Sewage storage tank" means a receptacle for the collection and holding of the waste from a portable toilet.
22. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
23. "Toilet seat" means a detachable, split or U-shaped seat made of non-absorbent material hinged to the top of a toilet and used for sitting.
24. "Urinal" means a water-flushed, chemical-flushed, or no-flush upright basin used for urination only.
25. "Vent pipe" means a hollow cylinder of metal, plastic, or other material that allows gas to escape from a sewage storage tank.
26. "Water closet" means the same as in A.R.S. § 45-311.

**Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Amended by final expedited rulemaking at 24 A.A.R. 389, effective February 7, 2018 (Supp. 18-1).

**R9-8-302. General Requirements**

- A. A responsible person or the responsible person's designee shall comply with the requirements in this Article and with federal and state laws and rules and local codes and ordinances governing public portable toilets.
- B. A violation of this Article shall constitute a public nuisance under A.R.S. § 36-601.

**Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Section repealed; new Section made by final expedited rulemaking at 24 A.A.R. 389, effective February 7, 2018 (Supp. 18-1).

**R9-8-303. Public Portable Toilet Requirements**

- A. A responsible person or the responsible person's designee shall ensure that:
  1. A public portable toilet:
    - a. Is clean;
    - b. Is sanitary;
    - c. Is maintained to avoid odors and insect or vermin infestation;
    - d. Has a non-absorbent, durable, smooth, leakproof, and rustproof floor, wall, ceiling, and door materials;
    - e. Has a vent pipe connected to a sewage storage tank that:
      - i. Is wide enough in diameter to prevent the build up of gasses, and
      - ii. Extends upwards from the sewage storage tank through the roof of the portable toilet enclosure;
    - f. Has a supply of toilet paper that is replenished before running out; and
    - g. Has a self-closing door and privacy latch on the door;
  2. Except as provided in subsection (B), one public portable toilet is deployed for the first 100 individuals using or expected to use public portable toilet facilities and one additional public portable toilet is deployed for each additional 100 individuals;
  3. Each public portable toilet's sewage storage tank is pumped out on a regular basis to keep the public portable toilet operating as designed;
  4. Facilities for washing or sanitizing hands are provided as follows:
    - a. Except as provided in subsection (B), working portable hand-wash stations are deployed at a minimum rate of one per 10 public portable toilets;

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- b. Soap, water, and single use towels are continuously provided at each portable hand-wash station; and
  - c. Where conditions make the use of soap and water impractical, the regulatory authority may allow sanitizing gel in place of soap and water; and
5. Public portable toilets are located a minimum of 100 feet from any food establishment.
- B.** A responsible person or the responsible person's designee shall ensure that sewage, human excreta, and refuse produced in a public portable toilet:
- 1. Does not create a public nuisance; and
  - 2. Is disposed of according to 18 A.A.C. 13, Article 3 or 18 A.A.C. 13, Article 11.
- C.** The regulatory authority may adjust the number of public portable toilets required in subsection (A)(2) and portable hand-wash stations required in (A)(5)(a) provided based on the estimated number of users, the duration of use, and the availability of public restrooms within 200 feet of the public portable toilet.

**Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2967, effective June 17, 2002 (Supp. 02-2). New Section made by final expedited rulemaking at 24 A.A.R. 389, effective February 7, 2018 (Supp. 18-1).

**R9-8-304. Inspections**

- A.** If a regulatory authority receives a complaint regarding a public portable toilet, the regulatory authority may conduct an inspection.
- B.** If a regulatory authority conducts an inspection, the regulatory authority's inspector shall conduct the inspection according to A.R.S. § 41-1009.

**Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Section repealed; new Section made by final expedited rulemaking at 24 A.A.R. 389, effective February 7, 2018 (Supp. 18-1).

**R9-8-305. Expired****Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 2169, effective May 31, 2007 (Supp. 07-2).

**R9-8-306. Repealed****Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Section repealed by final expedited rulemaking at 24 A.A.R. 389, effective February 7, 2018 (Supp. 18-1).

**R9-8-307. Repealed****Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Section repealed by final expedited rulemaking at 24 A.A.R. 389, effective February 7, 2018 (Supp. 18-1).

**R9-8-308. Expired****Historical Note**

Adopted effective April 10, 1997 (Supp. 97-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2967, effective June 17, 2002 (Supp. 02-2).

**ARTICLE 4. CHILDREN'S CAMPS**

*Article 4, consisting of Sections R9-8-401 through R9-8-403,*

*made by final rulemaking at 8 A.A.R. 3716, effective August 9, 2002 (Supp. 02-3).*

**R9-8-401. Definitions**

In this Article, unless otherwise requires:

1. "Applicant" means an individual requesting a license from the Department or a county to operate a children's camp.
2. "Bathing place" has the same meaning as in 9 A.A.C. 8, Article 8.
3. "Camp director" means an individual who runs, maintains, or otherwise controls or directs the functions of a children's camp.
4. "Children's camp" has the same meaning as in A.R.S. § 36-3901.
5. "County" means a governmental entity that has a delegation agreement with the Department as prescribed in A.R.S. § 36-3915.
6. "Delegation agreement" has the same meaning as in A.R.S. § 41-1001.
7. "Department" means the Arizona Department of Health Services.
8. "Food establishment" has the same meaning as in 9 A.A.C. 8, Article 1.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3716, effective August 9, 2002 (Supp. 02-3). Section amended by final expedited rulemaking at 24 A.A.R. 266, effective January 10, 2018 (Supp. 18-1).

**R9-8-402. Initial and Renewal License Application Process**

- A.** An applicant shall submit a completed license application form in subsection (B) to:
1. The county in which the children's camp is located, if the county has a delegation agreement with the Department under A.R.S. § 36-3915; or
  2. The Department, if there is no delegation agreement.
- B.** An applicant shall submit a completed license application form provided by the Department or a county that contains:
1. The name, mailing address, and telephone number of the children's camp;
  2. The county in which the children's camp is located;
  3. The name, telephone number, and mailing address of the applicant;
  4. The name, telephone number, and if applicable, e-mail address of the camp director;
  5. The dates of operation of the children's camp;
  6. The number of individuals the children's camp can accommodate;
  7. Whether there is a food establishment in the children's camp;
  8. Whether there is a bathing place in the children's camp;
  9. The potable water supply source at the children's camp;
  10. The type of sewage disposal system;
  11. Whether the application is for an initial or a renewal license; and
  12. The signature of the applicant.
- C.** With the completed license application, an applicant shall include a map that specifies the location of the children's camp, and:
1. For an initial license:
    - a. If applying to the Department, a fee of \$100, or
    - b. If applying to a county, a fee established according to A.R.S. § 36-3903.
  2. For a renewal license:
    - a. If applying to the Department, a fee of \$25 or

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- b. If applying to a county, a fee established according to A.R.S. § 36-3903.
- D. The Department or a county begins reviewing applications on May 1 of each year.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3716, effective August 9, 2002 (Supp. 02-3). Section amended by final expedited rulemaking at 24 A.A.R. 266, effective January 10, 2018 (Supp. 18-1).

**R9-8-403. Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or county is 60 days. The applicant and the Department or a county may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive time-frame and the overall time-frame shall not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or a county is 30 days and begins on May 1 of each year or on the date the application is received if after May 1.
1. The Department or a county shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
    - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the license application.
    - b. If the Department or a county issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department or a county receives the missing information from the applicant.
    - c. If the applicant fails to submit to the Department or a county all the information and documents listed in the notice of deficiencies within 60 days of the date the Department or a county mailed the notice of deficiencies, the Department or county deems the license application withdrawn.
  2. If the Department or a county issues a license to the applicant during the administrative completeness review time-frame, the Department or a county does not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant.
1. The Department or a county shall mail a children's camp license or a written notification of denial of the license application to the applicant within the substantive review time-frame.
  2. As part of the substantive-review time-frame for a children's camp license, the Department or a county may conduct an inspection of the children's camp to determine whether the children's camp has complied with the applicable requirements in subsection (C)(4) or (C)(5).
  3. If the Department or a county issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department or a county issues the request until the date the Department or a county receives all of the information.

4. If an applicant applying to the Department meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, and these rules, the Department shall issue a license to the applicant.
  5. If an applicant applying to a county meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, these rules, and county requirements consistent with A.R.S. Title 8, Chapter 6, Article 1, a county shall issue a license to the applicant.
  6. If the Department or a county disapproves a license application, the Department or a county shall send the applicant a written notice of disapproval setting forth the reasons for disapproval and all other information required in A.R.S. § 41-1076.
- D. If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department or a county considers the next business day as the time-frame's last day.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3716, effective August 9, 2002 (Supp. 02-3).

**ARTICLE 5. RECREATIONAL VEHICLES AND PARKS****R9-8-501. Definitions**

In this Article, unless otherwise specified:

1. "Bathroom" means a structure or room that contains at least one toilet and lavatory.
2. "Bedding" has the same meaning as in A.R.S. § 36-796.
3. "Clean" means free from dirt or debris.
4. "Common area" means an area of a recreational vehicle park, excluding areas within dwelling spaces, that is provided by the recreational vehicle park for general use.
5. "Community kitchen" means a structure or room in a common area that is provided by a recreational vehicle park for preparing food.
6. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit that is received as payment.
7. "Dependent recreational vehicle" means a recreational vehicle that does not have a toilet, bathtub, or shower room.
8. "Distribution system" has the same meaning as in A.A.C. R18-4-103(B).
9. "Dwelling space" means a plot of ground designated to accommodate one recreational vehicle for dwelling or sleeping purposes for more than 30 days, and does not include a plot of ground that is:
  - a. Designated to accommodate one recreational vehicle and is occupied by the owner of the plot of ground; or
  - b. Exclusively designated to:
    - i. Accommodate a recreational vehicle specified in A.R.S. § 33-2102, and
    - ii. Remains on the plot of ground for dwelling for more than 180 consecutive days specified in A.R.S. § 33-2101.
10. "Easily cleanable" means a characteristic of a surface that allows effective removal of dirt and debris by normal cleaning methods based on the material, design, construction, and installation of the surface.
11. "Faucet" means a fixture connected to a distribution system that provides and regulates the flow of potable water.

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12. "Fixture" means an attachment to a structure.
13. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for human consumption.
14. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
15. "Independent recreational vehicle" means a vehicular type that has a toilet, bathtub, or shower room.
16. "Lavatory" means a sink or a basin with a faucet that supplies potable water and with a drain connected to a sewage collection system.
17. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing substance.
18. "Owns" means to have the right to possess, use, and convey the interest.
19. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
20. "Political subdivision" means the same as in A.R.S. § 38-382.
21. "Potable water" means water safe for human consumption that meets the requirements of 18 A.A.C. 4 or satisfies the requirements in R9-8-505(6).
22. "Public health nuisance" means the activities or conditions dangerous to public health that are subject to A.R.S. § 36-601.
23. "Recreational vehicle" has the same meaning as in A.R.S. § 33-2102.
24. "Recreational vehicle park" or "trailer coach park" specified in A.R.S. § 36-136(I)(8) is defined in this Article to mean a place or portion of a place that offers two or more dwelling spaces for recreational vehicles to use overnight, regardless of whether or not compensation is exchanged.
25. "Refuse" has the same meaning as in A.A.C. R18-13-302.
26. "Refuse container" means a receptacle that is capable of being moved and is used for refuse storage.
27. "Regulatory authority" means
- The Department; or
  - Under delegation, the following entities as specified in A.R.S. § 36-136(E):
    - A local health department,
    - A county environmental department, or
    - A public health services district.
28. "Responsible party" means a person who owns a recreational vehicle park or a designee of the person who owns the recreational vehicle park.
29. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.
30. "Sewage" has the same meaning as in A.A.C. R18-9-101.
31. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.
32. "Shower head" means a fixture connected to a distribution system that allows potable water to fall on a user's body.
33. "Shower room" means a structure or room that contains at least one shower head and at least one floor drain.
34. "Stored" means holding refuse before the refuse is disposed of according to A.A.C. R18-13-311 and R18-13-312.
35. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
36. "Toilet alternative" means any system other than a toilet that:
- Is designed or used for the purpose of collecting human excreta; and
  - Has a process for waste treatment, such as composting, incinerating, chemical flushing, oil flushing, or a privy system.
37. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-502. General Provisions**

- A.** This Article does not apply:
- To a recreational vehicle park located on federal or tribal land within the state;
  - If an agency of the state or federal government or a political subdivision of the state provides land for overnight parking and restrictions for use of such areas are posted; or
  - To recreational vehicles exempt under A.R.S. § 36-136(I)(8).
- B.** A violation of this Article is a public health nuisance and may be subject to abatement pursuant to A.R.S. § 36-602.
- C.** Inspections of recreational vehicle parks shall be conducted in accordance with A.R.S. § 36-136(I)(8) by the regulatory authority.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-503. Bathroom, Toilet Alternative, and Shower Room Management**

- A.** A responsible party shall ensure that a recreational vehicle park provides a bathroom or toilet alternative if it accommodates a recreational vehicle that does not have a toilet.
- B.** A responsible party shall ensure that:
- No dwelling space offered for use by a recreational vehicle is more than 400 feet from a bathroom or toilet alternative;
  - Signs plainly indicate the locations of bathrooms, toilet alternatives, and shower rooms provided by the recreational vehicle park; and
  - The recreational vehicle park has a sufficient number of bathrooms or toilet alternatives according to Table 5.1.
- C.** A responsible party shall ensure that each bathroom, toilet alternative, and shower room provided by the recreational vehicle park meets the requirements listed in Table 5.2.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

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**Table 5.1. Bathroom or Toilet Alternative Requirements**

Number of Dependent Recreational Vehicles Occupying the Recreational Vehicle Park	Number of Bathrooms or Toilet Alternatives
1-25	1
26-50	2
51-75	3
Every additional 1-25	+1 additional

**Historical Note**

Table 5.1 made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**Table 5.2. Bathroom, Toilet Alternative, and Shower Room Management**

Requirement	Bathroom	Toilet Alternative	Shower Room
Is clean and sanitary	X	X	X
Is ventilated by an openable window, air conditioning, or other mechanical device	X	X	X
Has toilet paper	X	X	
Is maintained free from public health nuisance and free from insect and vermin infestation	X	X	X
Has refuse containers as specified in R9-8-507(1)	X	X	X
Has surfaces that are easily cleanable, sanitary and free from gaps other than ventilation	X	X	X
Has single-use soap or soap inside a dispenser at each provided lavatory	X		X
Has single-use paper towels or air hand dryers at each provided lavatory	X		X
Has a floor drain connected to a sewage collection system and, if built after the effective date of this Article, has floors that slope to the drain.			X
Has potable water from all shower heads			X
Has floors and walls of a non-absorbent material	X		X

**Historical Note**

Table 5.1 made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-504. Common Area Management**

A responsible party shall ensure that the following requirements are met:

1. Each common area:
  - a. Is clean and sanitary,
  - b. Is ventilated by an openable window, air conditioning, or other mechanical device,
  - c. Is maintained free from public health nuisance and free from insect and vermin infestations, and
  - d. Has refuse containers as specified in R9-8-507(1).
2. Bedding and cloth towels provided by the recreational vehicle park are:
  - a. Maintained in good-repair;
  - b. Clean and sanitary; and
  - c. Kept free of ectoparasites including bedbugs, lice, and mites.
3. A community kitchen provided by a recreational vehicle park:
  - a. Is maintained in a clean and sanitary condition; and
  - b. Complies with 9 A.A.C. 8, Article 1, if operating as a food establishment.
4. Any multi-use utensils and equipment provided by a recreational vehicle park in a common areas or community kitchen are easily cleanable and either:
  - a. Are washed, rinsed, and made sanitary before use by each separate individual; or

- b. A conspicuously located sign identifies which multi-use utensils and equipment provided by the recreational vehicle park are not washed, rinsed, and made sanitary before use by each separate individual.
5. A recreational vehicle park shall comply with 9 A.A.C. 8 Article 8, if within a common area, the recreational vehicle park provides a:
  - a. Natural bathing place as defined in A.A.C. R18-5-201,
  - b. Semi-artificial bathing place as defined in R9-8-801,
  - c. Spa as defined in A.A.C. R18-5-201, or
  - d. Swimming pool as defined in A.A.C. R18-5-201.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-505. Water Supply**

A responsible party shall ensure that the following requirements are met:

1. All water provided by the recreational vehicle park for human consumption is potable water.
2. Any source of water provided by the recreational vehicle park that is not potable is clearly identified with “not for human consumption” signage at each access point.
3. The potable water supply and distribution system provided by the recreational vehicle park is designed to pro-

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vide sufficient quantity at a minimum pressure of 20 pounds per square inch at ground level at each bathroom, shower room, and permanent water fixture provided at by the recreational vehicle park.

4. No dwelling space is more than 300 feet from a potable water source.
5. If water is hauled to the recreational vehicle park as a potable water supply, the water and transport shall meet the requirements of A.A.C. R18-4-214.
6. If potable water provided by the recreational vehicle park is not from a public water system as defined by 18 A.A.C. 4:
  - a. The potable water provided is tested prior to use with results of:
    - i. No coliform bacteria or other fecal indicator present, and
    - ii. Nitrate (as N) no greater than 10 mg/l.
  - b. The potable water provided is routinely monitored to determine:
    - i. The presence or absence of total coliform bacteria at least once every month of operation, and
    - ii. The concentration of nitrates at least once every 3 months.
  - c. Water samples collected in accordance with this Section shall be analyzed by a laboratory that is licensed according to 9 A.A.C. 14, Article 6.
  - d. Records of water sample results analyzed in accordance with this Section shall be:
    - i. Maintained at the recreational vehicle park for at least 12 months, and
    - ii. Made available to the regulatory authority upon request.
  - e. Written notification must be provided to the regulatory authority within 24 hours when any water quality requirement listed in subsection (6)(a) out-of-compliance.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-506. Sewage Disposal**

A responsible party shall ensure that sewage and human excreta produced within the recreational vehicle park:

1. Does not create a public health nuisance, and
2. Is collected and disposed of by systems designed, constructed and operated in compliance with the requirements in 18 A.A.C. 9, Articles 3 and 7.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-507. Refuse Management**

A responsible party shall ensure that the following requirements are met:

1. The recreational vehicle park has conspicuously located refuse containers capable of adequately servicing all dwelling spaces that are:
  - a. Constructed of non-absorbent material that is capable of withstanding expected use and remaining easily cleanable, and
  - b. Covered.
2. Signs plainly indicate the locations of refuse containers.
3. Refuse produced within the recreational vehicle park:
  - a. Does not create a public health nuisance; and

- b. Is collected, stored, and disposed of according to 18 A.A.C. 13, Article 3.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-508. Reserved**

**R9-8-509. Reserved**

**R9-8-510. Reserved**

**R9-8-511. Expired**

**Historical Note**

Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3256, effective June 17, 2002 (Supp. 02-3).

**R9-8-512. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-513. Reserved**

**R9-8-514. Reserved**

**R9-8-515. Reserved**

**R9-8-516. Reserved**

**R9-8-517. Reserved**

**R9-8-518. Reserved**

**R9-8-519. Reserved**

**R9-8-520. Reserved**

**R9-8-521. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-522. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-523. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-524. Reserved**

**R9-8-525. Reserved**

**R9-8-526. Reserved**

**R9-8-527. Reserved**

**R9-8-528. Reserved**

**R9-8-529. Reserved**

**R9-8-530. Reserved**

**R9-8-531. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

**R9-8-532. Reserved**

**R9-8-533. Repealed**

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**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

- R9-8-534. Reserved**
- R9-8-535. Reserved**
- R9-8-536. Reserved**
- R9-8-537. Reserved**
- R9-8-538. Reserved**
- R9-8-539. Reserved**
- R9-8-540. Reserved**
- R9-8-541. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

- R9-8-542. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

- R9-8-543. Repealed**

**Historical Note**

Section R9-8-543 and Table repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

- R9-8-544. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

- R9-8-545. Reserved**
- R9-8-546. Reserved**
- R9-8-547. Reserved**
- R9-8-548. Reserved**
- R9-8-549. Reserved**
- R9-8-550. Reserved**
- R9-8-551. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

- R9-8-552. Reserved**
- R9-8-553. Reserved**
- R9-8-554. Reserved**
- R9-8-555. Reserved**
- R9-8-556. Reserved**
- R9-8-557. Reserved**
- R9-8-558. Reserved**
- R9-8-559. Reserved**
- R9-8-560. Reserved**
- R9-8-561. Expired**

**Historical Note**

Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3256, effective June 17, 2002 (Supp. 02-3).

**ARTICLE 6. CAMPGROUNDS****R9-8-601. Definitions**

In this Article, unless otherwise specified:

1. "Bathroom" means a structure or room that contains at least one toilet or urinal.
2. "Bedding" has the same meaning as in A.R.S. § 36-796.
3. "Campground" means land or a portion of land that is designated for the purpose of outdoor activities and offers campsites.
4. "Camping shelter" means either of the following:
  - a. A recreational vehicle offered for overnight use that:
    - i. Provides an individual a covered space, and
    - ii. Does not provide sleeping material; or
  - b. A structure offered for overnight use, such as a cabin or teepee, that:
    - i. Provides an individual a covered space; and
    - ii. Does not provide:
      - (a) Sleeping material,
      - (b) A lavatory, or
      - (c) A toilet.
5. "Campsite" means a plot of ground offered by a campground for overnight sleeping activities for an individual or a group of individuals to engage in any of the following uses for less than 30 days:
  - a. Erecting a self-provided tent,
  - b. Arranging self-provided sleeping material,
  - c. Occupying a camping shelter, or
  - d. Parking a self-provided motor vehicle as defined in A.R.S. § 44-281 or a self-provided recreational vehicle as defined in A.R.S. § 33-2102.
6. "Clean" means free from dirt or debris.
7. "Common area" means an area of a campground, excluding areas within a campsite, that is provided by a campground for general use.
8. "Community kitchen" means a structure or room, excluding areas within a campsite, that is provided by a campground for preparing food.
9. "Distribution system" has the same meaning as in A.A.C. R18-4-103(B).
10. "Easily cleanable" means a characteristic of a surface that allows effective removal of dirt and debris by normal cleaning methods based on the material, design, construction, and installation of the surface.
11. "Faucet" means a fixture connected to a distribution system that provides and regulates the flow of potable water.
12. "Fixture" means an attachment to a structure.
13. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for human consumption.
14. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
15. "Lavatory" means a sink or a basin with a faucet that supplies potable water capable of reaching at least 85° F and with a drain connected to a sewage collection system.
16. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing substance.
17. "Owns" means to have the right to possess, use, and convey the interest.
18. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
19. "Potable water" means water safe for human consumption that meets the requirements of 18 A.A.C. 4 or satisfies the requirements in R9-8-605(4).

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- 20. "Public health nuisance" means the activities or conditions dangerous to public health that are subject to A.R.S. § 36-601.
- 21. "Recreational vehicle" has the same meaning as in A.R.S. § 33-2102.
- 22. "Refuse" has the same meaning as in A.A.C. R18-13-302.
- 23. "Refuse container" means a receptacle that is capable of being moved and is used for refuse storage.
- 24. "Regulatory authority" means
  - a. The Department; or
  - b. Under delegation, the following entities as specified in A.R.S. § 36-136(E):
    - i. A local health department,
    - ii. A county environmental department, or
    - iii. A public health services district.
- 25. "Responsible party" means a person who owns a campground or a designee of the person who owns the campground.
- 26. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.
- 27. "Sewage" has the same meaning as in A.A.C. R18-9-101.
- 28. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.
- 29. "Shower head" means a fixture connected to a distribution system that allows potable water to fall on a user's body.
- 30. "Shower room" means a structure or room that contains at least one shower head and at least one floor drain.
- 31. "Sleeping material" means any of the following:
  - a. A sheet,
  - b. A pillow,
  - c. A pillowcase,
  - d. A blanket, or
  - e. A sleeping bag.
- 32. "Stored" means holding refuse before the refuse is disposed of according to A.A.C. R18-13-311 and R18-13-312.
- 33. "Tent" means a collapsible structure that is designed for overnight sleeping purposes and capable of being moved.
- 34. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
- 35. "Toilet alternative" means any system other than a toilet that:

- a. Is designed or used for the purpose of collecting human excreta; and
  - b. Has a process for waste treatment, such as composting, incinerating, chemical flushing, oil flushing, or a privy system.
- 36. "Urinal" means a water-flushed, chemical-flushed, or no-flush upright basin used for urination only.
  - 37. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-602. General Provisions**

- A. This Article does not apply to:
  - 1. Primitive camp and picnic grounds as defined in A.R.S. § 36-136(I)(8), or
  - 2. Campgrounds located on federal or tribal land within the state.
- B. A violation of this Article is a public health nuisance and may be subject to abatement pursuant to A.R.S. § 36-602.
- C. Inspections of campgrounds shall be conducted in accordance with A.R.S. § 36-136(I)(8) by the regulatory authority.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-603. Bathroom, Toilet Alternative, and Shower Room Management**

A responsible party shall ensure that:

- 1. No campsite is more than 400 feet from a toilet or toilet alternative;
- 2. Signs plainly indicate the locations of toilets and showers provided by the campground;
- 3. The campground has a sufficient number of toilets or toilet alternatives according to Table 6.1, and
- 4. Each bathroom, toilet alternative, and shower room provided by the campground meets the requirements listed in Table 6.2.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**Table 6.1. Toilet or Toilet Alternative Requirements**

Number of Individuals Occupying the Campground	Number of Toilets or Toilet Alternatives
1-25	1
26-50	2
51-75	3
Every additional 1-25	+1 additional

**Historical Note**

Table 6.1 made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**Table 6.2. Bathroom, Toilet Alternative, and Shower Room Management**

Requirement	Bathroom	Toilet Alternative	Shower Room
Is clean and sanitary	X	X	X
Is ventilated by an openable window, air conditioning, or other mechanical device	X	X	X
Has toilet paper	X	X	
Is maintained free from public health nuisance and free from insect and vermin infestation	X	X	X
Has refuse containers as specified in R9-8-607(1)	X	X	X

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Has surfaces that are easily cleanable, sanitary, and free from gaps other than ventilation	X	X	X
Has soap and single-use paper towels or air hand dryers at each lavatory	X		
Has a floor drain connected to a sewage collection system and, if built after the effective date of this Article, has floors that slope to the drain.			X
Has potable water from all shower heads			X
Has floors and walls of a non-absorbent material			X

**Historical Note**

Table 6.2 made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-604. Common Area Management**

A responsible party shall ensure that the following requirements are met:

1. Bedding and towels provided by the campground are:
  - a. Maintained in good-repair;
  - b. Clean and sanitary; and
  - c. Kept free of ectoparasites including bedbugs, lice, and mites.
2. A community kitchen provided by a campground:
  - a. Is maintained in a clean and sanitary condition; and
  - b. Complies with 9 A.A.C. 8, Article 1 if operating as a food establishment.
3. Any multi-use utensils and equipment provided by the campground are easily cleanable and either:
  - a. Are washed, rinsed, and made sanitary before use by each separate individual; or
  - b. A conspicuously located sign identifies which multi-use utensils and equipment provided by the campground are not washed, rinsed, and made sanitary before use by each separate individual.
4. A campground shall comply with 9 A.A.C. 8 Article 8, if within a common area, the campground provides a:
  - a. Natural bathing place as defined in A.A.C. R18-5-201,
  - b. Semi-artificial bathing place as defined in R9-8-801,
  - c. Spa as defined in A.A.C. R18-5-201, or
  - d. Swimming pool as defined in A.A.C. R18-5-201.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-605. Water Supply**

A responsible party shall ensure that the following requirements are met:

1. All water provided by the campground for human consumption is potable water.
2. Any source of water provided by the campground that is not potable is clearly identified with “not for human consumption” signage at each access point.
3. The potable water supply and distribution system provided by the campground is designed to provide sufficient quantity at a minimum pressure of 20 pounds per square inch at ground level at each bathroom, shower room, and permanent water fixture provided by the campground.
4. No campsite is more than 300 feet from a potable water source.
5. If water is hauled to the campground as a potable water supply, the water and transport shall meet the requirements of A.A.C. R18-4-214.
6. If potable water provided by the campground is not from a public water system as defined by 18 A.A.C. 4:

- a. The potable water provided is tested prior to use with results of:
  - i. No coliform bacteria or other fecal indicator present; and
  - ii. Nitrate (as N) no greater than 10 mg/l.
- b. The potable water provided is routinely monitored to determine:
  - i. The presence or absence of total coliform bacteria at least once every month of operation, and
  - ii. The concentration of nitrates at least once every 3 months.
- c. Water samples collected in accordance with this section shall be analyzed by a laboratory that is licensed by the Arizona State Laboratory Office of Laboratory Services and licensed according to 9 A.A.C. 14, Article 6.
- d. Records of water sample results analyzed in accordance with this section shall be:
  - i. Maintained at the campground for at least 12 months and
  - ii. Made available to the Department upon request.
- e. Written notification must be provided to the regulatory authority within 24 hours when any water quality requirement listed in subsection (a) is out-of-compliance.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-606. Sewage Disposal**

A responsible party shall ensure that sewage and human excreta produced within the campground:

1. Does not create a public health nuisance; and
2. Is collected and disposed of by systems designed, constructed and operated in compliance with the requirements in 18 A.A.C. 9, Articles 3 and 7.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-607. Refuse Management**

A responsible party shall ensure that the following requirements are met:

1. The campground has conspicuously located refuse containers that are:
  - a. Constructed of non-absorbent material that is capable of withstanding expected use and remaining easily cleanable, and
  - b. Covered.
2. Signs plainly indicate the locations of refuse containers.

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3. No campsite is more than 200 feet from a refuse container.
4. Refuse produced within the campground:
  - a. Does not create a public health nuisance; and
  - b. Is collected, stored, and disposed of according to 18 A.A.C. 13, Article 3.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-608. Camping Shelter Management**

A responsible party shall ensure that the following requirements are met:

1. A camping shelter is:
  - a. Clean and sanitary;
  - b. Ventilated by an openable window, air conditioning, or other mechanical device; and
  - c. Maintained free from public health nuisance and free from insect and vermin infestation.
2. Bedding and towels provided in a camping shelter are:
  - a. Maintained in good-repair;
  - b. Clean and sanitary; and
  - c. Kept free of ectoparasites including bedbugs, lice, and mites.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-609. Reserved****R9-8-610. Reserved****R9-8-611. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-612. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-613. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-614. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-615. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-616. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**R9-8-617. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

**ARTICLE 7. PUBLIC SCHOOLS****R9-8-701. Definitions**

In this Article, unless otherwise specified:

1. "Ample water supply" means sufficient water quantity and water pressure to operate all of a school's drinking fountains, bathtubs, showers, lavatories, water closets, and urinals at all times from:
  - a. A public water system that complies with 18 A.A.C. 4; or
  - b. An underground water source that complies with 18 A.A.C. 11, Articles 4 and 5 or with A.R.S. § 45-811.01.
2. "Animal" means a mammal, bird, reptile, amphibian, fish or invertebrate, such as an insect, spider, worm, snail, clam, crab, or starfish.
3. "Aquifer" means the same as in A.R.S. § 49-201.
4. "Bathroom" means a restroom that contains a shower head or bathtub.
5. "Bathtub" means a receptacle, in which a user sits, with a faucet that supplies hot and cold water, or warm water, for filling the receptacle and a drain connected to a sanitary sewer.
6. "Bottled water" means the same as in R9-8-201.
7. "Bottled water cooler" means a device that is not connected to a plumbing system and provides a vertically falling stream of drinking water from a source approved by the Department under 9 A.A.C. 8, Article 2, or that complies with 18 A.A.C. 4; 18 A.A.C. 11, Articles 4 and 5, or A.R.S. § 45-811.01.
8. "Calendar year" means January 1 through December 31.
9. "Classroom" means an interior area of a school used primarily for instruction of students.
10. "Clean" means free of dirt or debris.
11. "Cold water" means water with a temperature from 33° F to 74° F.
12. "Common drinking cup" means a hand-held container not connected to a plumbing system that:
  - a. Holds liquid for human consumption,
  - b. Comes into contact with a user's mouth, and
  - c. Is used by more than one individual.
13. "Complaint" means information indicating the need for inspection due to possible violations of this Article.
14. "Constructed underground storage facility" means the same as in A.R.S. § 45-802.01.
15. "Debris" means litter or the remains of something that has been broken or torn into pieces.
16. "Department" means the Arizona Department of Health Services.
17. "Device" means a piece of equipment that performs a specific function.
18. "Drinking fountain" means a fixture connected to a plumbing system that provides a non-vertical stream of drinking water from an opening and drains into a sanitary sewer.
19. "Drinking water" means water for human consumption that meets the requirements of 18 A.A.C. 4, or 18 A.A.C. 11, Article 4.
20. "Dumpster" means a container designed for mechanical lifting and dumping by a refuse collection vehicle that transports the container's contents.
21. "Faucet" means a fixture connected to a plumbing system that provides and regulates the flow of drinking water from the plumbing system.
22. "Fixture" means a permanent attachment to a structure.
23. "Floor drain" means an opening in a floor surface that leads to a sanitary sewer.

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24. "Food establishment" means an entity that stores, prepares, packages, serves, or otherwise provides food for human consumption directly to a consumer or indirectly through a delivery service.
25. "Habitat" means a place where an animal is kept while on school grounds.
26. "Hot water" means water with a temperature from 95° F to 120° F.
27. "Human consumption" means an individual's use of water for activities such as drinking, bathing, showering, handwashing, cooking, dishwashing, laundering, cleaning, or using a water closet.
28. "Hydration" means the process of replacing fluids lost by a human body.
29. "Lavatory" means a sink or a basin with a faucet that supplies hot and cold water, or warm water, and with a drain connected to a sanitary sewer.
30. "Local health department" means:
- The administrative division of an Arizona county, city, or town that manages environmental and health-related issues; or
  - A public health services district under A.R.S. Title 48, Chapter 33.
31. "Managed underground storage facility" means the same as in A.R.S. § 45-802.01.
32. "Non-absorbent" means not capable of absorbing or soaking up liquids.
33. "Non-classroom" means an indoor area in a school, such as the school office, nurse's office, library, or cafeteria, that are not used primarily for instruction of students.
34. "Overflow rim" means the raised edge around a drinking fountain's basin.
35. "Participant" means:
- A member of the staff or a student of a school, or
  - A member of the staff or a student from another school, when the individual is present on the grounds of the school specified in subsection (a) for a school-organized activity.
36. "Plumbing system" means fixtures, pipes, and related parts assembled to carry drinking water into a structure and carry sewage out of the structure.
37. "Portable water container" means any type of device, not connected to a plumbing system, provided by a school, such as a bottle, cup, pitcher, or insulated cylindrical cooler, in which drinking water is held or carried.
38. "Private school" means the same as in A.R.S. § 15-101.
39. "Public water system" means the same as in A.R.S. § 49-352.
40. "Refuse" means the same as in A.A.C. R18-13-302.
41. "Refuse container" means a portable receptacle used for refuse storage until the refuse is placed into a dumpster.
42. "Responsible person" means:
- For an accommodation school defined in A.R.S. § 15-101, the county school superintendent with the powers and duties prescribed in A.R.S. Title 15, Chapter 3, Article 1;
  - For a charter school defined in A.R.S. § 15-101, the governing board defined in A.A.C. R7-2-1401;
  - For the Arizona State Schools for the Deaf and the Blind, the board of directors for the Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 2;
  - For a school operated by a school district, the school district's governing board defined in A.R.S. § 15-101.
43. "Restroom" means a structure or room that contains at least one lavatory and water closet or at least one lavatory, water closet, and urinal.
44. "Sanitary sewer" means the same as in A.R.S. § 45-101.
45. "Sanitize" means the same as in A.A.C. R9-5-101.
46. "School" means an institution offering instruction:
- That is:
    - An accommodation school defined in A.R.S. § 15-101;
    - The Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 1;
    - A charter school defined in A.R.S. § 15-101; or
    - A school operated by a school district defined in A.R.S. § 15-101; and
  - That is not a private school.
47. "Sewage" means the same as in A.A.C. R18-13-1102.
48. "Shower head" means a fixture connected to a plumbing system that allows drinking water to fall on a user's body.
49. "Shower room" means a structure or room that contains at least one shower head and one floor drain, but does not contain a bathtub, lavatory, water closet, or urinal.
50. "Underground water source" means:
- An aquifer,
  - A constructed underground storage facility, or
  - A managed underground storage facility.
51. "Urinal" means the same as in A.R.S. § 45-311.
52. "Warm water" means water with a temperature from 75° F to 94° F.
53. "Water closet" means the same as in A.R.S. § 45-311.
54. "Water cooler" means a fixture connected to a plumbing system for cooling water and dispensing a vertically falling stream of drinking water.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-702. General Provisions**

- A.** A responsible person shall ensure that a school complies with the provisions of this Article and with federal and state statutes and rules and local ordinances governing subjects included in A.R.S. § 36-136(H)(9).
- B.** A violation of this Article is a public nuisance under A.R.S. § 36-601.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-703. Restroom, Bathroom, and Shower Room Requirements**

- A.** A responsible person shall ensure that a school provides restrooms or bathrooms that:
- Are clean; and
  - Have:
    - Floors of a non-absorbent material;
    - Floors that slope to a drain connected to a sanitary sewer;
    - Water closets with seats of the split or U-shaped type made of non-absorbent material;
    - Interior surfaces that are clean, washable, and free from gaps;
    - Toilet paper at all water closets; and
    - Soap and single-use paper towels or air hand dryers at all lavatories.
- B.** If a school provides a shower room, the responsible person shall ensure that the shower room:

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1. Is clean;
  2. Does not have a school-provided cloth towel unless, after each use, the cloth towel is machine washed with detergent and machine dried; and
  3. Has:
    - a. Hot and cold, or warm water from all shower heads;
    - b. Floors of a non-absorbent material;
    - c. Floors that slope to a drain connected to a sanitary sewer; and
    - d. Interior surfaces that are clean, washable, and free of gaps.
- C. A responsible person shall ensure that restrooms, bathrooms, and shower rooms are maintained to avoid odors.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-704. Cafeterias and Food Service**

- A. A responsible person for a school that stores, prepares, or serves food on the premises shall ensure that the school complies with 9 A.A.C. 8, Article 1, except when the food is brought to the school by staff or a student for personal consumption.
- B. If a school contracts with a food establishment to prepare and deliver food to the school, the responsible person shall:
  1. Ensure that the food establishment has a current license or permit issued under 9 A.A.C. 8, Article 1; and
  2. Retain a copy of the food establishment's current license or permit, required in subsection (B)(1), for inspection.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-705. Indoor Areas**

- A responsible person shall ensure that:
1. Indoor classroom and non-classroom areas are clean; and
  2. If a classroom has a lavatory in it, the lavatory has soap and single-use paper towels or air hand dryers.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-706. Water Supply**

- A. A responsible person shall ensure that a school has an ample water supply.
- B. A responsible person shall ensure that a school's drinking water is dispensed from:
  1. A clean drinking fountain that:
    - a. Provides, from an opening, a stream of water that does not touch anything before reaching a user's mouth;
    - b. Has an opening that is higher than the overflow rim to prevent the opening's submersion; and
    - c. Has a device to prevent a user's mouth from touching the opening from which the water streams;
  2. A clean and sanitized water cooler;
  3. A clean and sanitized bottled water cooler;
  4. A clean and sanitized lavatory faucet; or
  5. A clean and sanitized portable water container.
- C. If a portable water container or the bottle from a school's bottled water cooler is to be refilled, a responsible person shall ensure that the portable water container or the bottle is:
  1. Washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1;
  2. Stored in a clean area; and

3. Refilled with drinking water from any of the sources of drinking water specified in subsection (B).
- D. A responsible person shall ensure that a school does not provide a common drinking cup unless the common drinking cup is washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1, after each use.
- E. A responsible person shall ensure that a school provides:
  1. Drinking fountains, water coolers, or bottled water coolers according to Tables 1 and 2; and
  2. At least one drinking fountain, water cooler, or bottled water cooler on each floor of the school that contains a classroom, regardless of the number of students.

**Table 1. Kindergarten to Eighth Grade**

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-50	1
51-100	2
101-150	3
151-200	4
201-250*	5

\* For each additional 1-50 students, another drinking fountain, water cooler, or bottled water cooler is required.

**Table 2. Ninth Grade to Twelfth Grade**

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-100	1
101-200	2
201-300	3
301-400	4
401-500*	5

\* For each additional 1-100 students, another drinking fountain, water cooler, or bottled water cooler is required.

- F. A responsible person shall ensure a school provides drinking water that is:
1. Accessible from the school grounds; and
  2. Sufficient to maintain the hydration of all participants at school-organized outdoor activities.

**Historical Note**

New Section, including Tables 1 and 2, made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-707. Sewage Disposal**

- A responsible person shall ensure that a school's:
1. Water closets and urinals flush sewage to a sanitary sewer;
  2. Lavatories, showers, bathtubs, and other plumbing fixtures drain sewage to a sanitary sewer; and
  3. Sanitary sewer lines are maintained in accordance with the recommendations of the local health department.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282,

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effective March 11, 2006 (Supp. 06-1).

**R9-8-708. Refuse Management**

A responsible person shall ensure that a school:

1. Stores refuse in durable, non-absorbent, and washable containers;
2. Provides:
  - a. Indoor refuse containers in each classroom and in each non-classroom area; and
  - b. Accessible outdoor refuse containers;
3. Maintains refuse containers so that refuse does not accumulate in school buildings or on school grounds; and
4. Disposes of refuse according to 18 A.A.C. 13, Article 3.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-709. Animal Standards**

A. A responsible person shall ensure that an animal in a school:

1. Is kept in a habitat that:
  - a. Has water free of algae, insects, and particulate matter;
  - b. Is maintained to avoid odors from rotting food or excess animal wastes; and
  - c. Is not in the same room as food preparation areas, as specified in 9 A.A.C. 8, Article 1;
2. May be removed from the animal's habitat at the direction of a teacher;
3. When out of the animal's habitat, is under the control of a teacher or a student of the school, if the animal is:
  - a. A bird, reptile, amphibian, or invertebrate;
  - b. A large mammal, such as a horse, sheep, pig, goat, or cow;
  - c. A rabbit or hare; or
  - d. A rodent, such as a mouse, rat, hamster, guinea pig, or gerbil;
4. Has a current immunization against rabies, if the animal is a dog, cat or ferret, as documented by:
  - a. A dog license issued by a state or county agency;
  - b. A rabies immunization certificate from a veterinarian licensed under 3 A.A.C. 11;
  - c. A receipt for veterinary services, showing the administration of a rabies vaccine; or
  - d. A written statement attesting to the current immunization of the animal against rabies; and
5. Is not:
  - a. A non-human primate;
  - b. A deer mouse, or other wild mouse of the genus *Peromyscus*; and
  - c. A bat, skunk, raccoon, fox, wolf-hybrid or coyote, except when brought into a classroom for an educational display, as defined in R12-4-401, by a person who has complied with provisions in 12 A.A.C. 4, Article 4, obtained a permit or license issued by the Arizona Game and Fish Department, and is experienced in handling the animal.

B. A responsible person shall ensure that a room, in which an animal in a school is kept:

1. Is free of animal waste, except in the habitat; and
2. Has:
  - a. A lavatory with soap and single-use paper towels or air hand dryers; or
  - b. A product to sanitize the hands of an individual who touches an animal or its habitat.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282,

effective March 11, 2006 (Supp. 06-1).

**R9-8-710. Pest Control**

A responsible person shall ensure that indoor classroom and non-classroom areas are kept free of insects and rodents, except when the insects or rodents are being kept as specified in R9-8-709 or are food for animals being kept as specified in R9-8-709.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-711. Inspections**

The Department shall inspect:

1. A school for compliance with this Article at least once each calendar year, and
2. Areas of a school pertinent to the details of a complaint upon receipt of the complaint.

**Historical Note**

Section repealed; new Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-712. Repealed****Historical Note**

Section repealed by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-713. Repealed****Historical Note**

Section repealed by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-714. Repealed****Historical Note**

Section repealed by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-715. Repealed****Historical Note**

Section repealed by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-716. Repealed****Historical Note**

Section repealed by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**R9-8-717. Repealed****Historical Note**

Section repealed by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

**ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES****R9-8-801. Definitions**

In this Article, unless otherwise specified:

1. "Artificial lake" has the same meaning as in A.A.C. R18-5-201.
2. "Backwash" has the same meaning as in A.A.C. R18-5-201.
3. "Bathing place" means a volume of water that is used for water contact recreation.
4. "Clean" means free from slime, scum, dirt, or other debris.
5. "Deck" has the same meaning as in A.A.C. R18-5-201.
6. "Department" means the Arizona Department of Health Services.

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7. "Incontinent" means unable to restrain a bowel movement.
8. "Local health department" has the same meaning as in R9-18-101.
9. "Maximum bathing load" has the same meaning as in A.A.C. R18-5-201.
10. "Natural bathing place" has the same meaning as in A.A.C. R18-5-201.
11. "Operate" has the same meaning as in A.A.C. R18-5-201.
12. "Operator" means an individual who owns, runs, maintains, or otherwise controls or directs the functioning of a bathing place.
13. "Oxidation-reduction potential" means the measurement in millivolts of the potential for transfer of electrons from one atom or molecule to another in water.
14. "Potable water" has the same meaning as in A.A.C. R18-5-201.
15. "Ppm" means parts per million.
16. "Private residential spa" has the same meaning as in A.A.C. R18-5-201.
17. "Private residential swimming pool" has the same meaning as in A.A.C. R18-5-201.
18. "Public health services district" has the same meaning as "district" in A.R.S. § 48-5801.
19. "Public spa" has the same meaning as in A.A.C. R18-5-201.
20. "Public swimming pool" has the same meaning as in A.A.C. R18-5-201.
21. "Regulatory authority" means the Department or a local health department or public health services district operating under a delegation of authority from the Department.
22. "Sanitary facility" means a designated area that includes a toilet, urinal, sink, or shower.
23. "Scum" means a film that forms on the surface of water.
24. "Semi-artificial bathing place" means a lake, pond, river, stream, swimming hole, or hot spring that is modified to be used for water contact recreation.
25. "Semipublic spa" has the same meaning as in A.A.C. R18-5-201.
26. "Semipublic swimming pool" has the same meaning as in A.A.C. R18-5-201.
27. "Shallow area" has the same meaning as in A.A.C. R18-5-201.
28. "Shock treatment" means adding chlorine to water to elevate the free chlorine residual to 20 ppm and destroy ammonia and nitrogenous and organic contaminants in the water.
29. "Slime" means a glutinous or viscous liquid matter.
30. "Spa" has the same meaning as in A.A.C. R18-5-201.
31. "Surface water" has the same meaning as in A.A.C. R18-11-101.
32. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.
33. "Turnover rate" has the same meaning as in A.A.C. R18-5-201.
34. "Wading pool" has the same meaning as in A.A.C. R18-5-201.
35. "Water circulation system" has the same meaning as in A.A.C. R18-5-201.
36. "Water circulation system components" has the same meaning as in A.A.C. R18-5-201.
37. "Water fountain" means a bathing place that functions by using mechanical means to propel a stream of water out of an opening or structure.
38. "Water contact recreation" means an activity for enjoyment in which an individual wets all or part of the individual's body with water.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-802. Applicability**

This Article does not apply to:

1. A private residential swimming pool,
2. A private residential spa,
3. A bathing place used for medical treatment or physical therapy supervised by licensed medical personnel, or
4. A body of water that is not used as a bathing place.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-803. Public and Semipublic Swimming Pool and Spa Water Quality and Disinfection Standards**

- A. An operator of a public or semipublic swimming pool or spa shall ensure that:
  1. The swimming pool or spa is filled only with potable water;
  2. The water in the swimming pool or spa:
    - a. Complies with the water quality standards in this Section when the swimming pool or spa is open for water contact recreation;
    - b. Maintains a pH of between 7.2 and 7.8;
    - c. Maintains a total alkalinity of between 60 and 100 ppm; and
    - d. Is sufficiently clear so that the main drain in the swimming pool or spa is visible from the deck of the swimming pool or spa;
  3. The surface of the water in the swimming pool or spa is free from scum and floating debris;
  4. The bottom and sides of the swimming pool or spa are free from sediment, dirt, slime, and algae;
  5. The chemical disinfection level, pH, total alkalinity, and temperature of the water is tested at least once daily; and
  6. A daily operating log that includes the results of the tests in subsection (A)(5) is maintained for 12 months from the date of the test and is available to a regulatory authority or a member of the public upon request.
- B. An operator of a public or semipublic swimming pool or spa:
  1. Shall not use chloramine as a primary disinfectant in the swimming pool or spa;
  2. Shall not add gaseous disinfectant directly into the swimming pool;
  3. Shall not add dry or liquid disinfectant directly into the swimming pool or spa for routine disinfection; and
  4. May add dry or liquid disinfectant directly into the swimming pool or spa for shock treatment.
- C. An operator of a public or semipublic swimming pool or spa using chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization in the swimming pool or spa shall ensure that the water in the swimming pool or spa maintains an oxidation-reduction potential equal to or greater than 650 millivolts and that cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, do not exceed 150 ppm.
- D. An operator of a public or semipublic swimming pool shall ensure that the water in the swimming pool meets one of the following chemical disinfection standards:
  1. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,

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2. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
  3. An oxidation-reduction potential equal to or greater than 650 millivolts.
- E.** An operator of a public or semipublic spa shall ensure that:
1. A chlorine gas disinfection system is not used in the spa;
  2. The water temperature in the spa does not exceed 40EC; and
  3. The water in the spa meets one of the following chemical disinfection standards:
    - a. A free chlorine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,
    - b. A free bromine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
    - c. An oxidation-reduction potential equal to or greater than 650 millivolts.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-804. Public and Semipublic Swimming Pool and Spa Water Circulation Requirements**

- A.** An operator of a public or semipublic swimming pool or spa shall ensure that:
1. The swimming pool or spa water circulation system complies with the water circulation requirements in 18 A.A.C. 5, Article 2; and
  2. The swimming pool or spa is equipped with:
    - a. A flow meter as specified in 18 A.A.C. 5, Article 2; and
    - b. A vacuum cleaning system as specified in 18 A.A.C. 5, Article 2.
- B.** An operator may draw water from a swimming pool for a water slide or a water fountain without filtering or disinfecting the water.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-805. Public and Semipublic Swimming Pool and Spa Maximum Bathing Loads**

An operator of a public or semipublic swimming pool or spa shall ensure that the maximum bathing load, as specified in 18 A.A.C. 5, Article 2, is not exceeded.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-806. Posting Requirements**

An operator of a public or semipublic swimming pool or spa shall ensure that a sign is posted within 50 feet of the swimming pool or spa, that includes the following instructions:

1. Use the toilet before entering the pool or spa;
2. Take a shower before entering the pool or spa;
3. Do not enter the pool with a cold, skin or other body infection, open wound, diarrhea, or any other contagious condition;
4. If incontinent, wear tight fitting rubber or plastic pants or a swim diaper; and
5. Observe all safety regulations.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645,

effective August 9, 2002 (Supp. 02-3).

**R9-8-807. Public and Semipublic Swimming Pool and Spa and Bathing Place Facility Sanitation**

- A.** An operator of a public or semipublic swimming pool or spa shall ensure that a sanitary facility at the public or semipublic swimming pool is maintained in a clean condition.
- B.** An operator of a public or semipublic swimming pool or bathing place shall provide a soap dispenser with liquid or powdered soap at each sink in a sanitary facility.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-808. Bathing Place Towels**

If a towel is provided by a bathing place to an individual using the bathing place, an operator of the bathing place shall ensure that the towel is washed with soap or detergent and hot water and thoroughly dried after each individual use.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-809. Disposal of Sewage, Filter Backwash, and Wasted Swimming Pool or Spa Water**

An operator of a public or semipublic swimming pool or spa shall ensure that sewage, filter backwash, and swimming pool or spa water are disposed of according to A.A.C. R18-5-236.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-810. Fecal Contamination in Public and Semipublic Swimming Pools and Spas**

- A.** If solid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed,
  2. The feces in the swimming pool or spa are removed and disposed of in a toilet,
  3. The chemical disinfection level of the water in the swimming pool or spa is tested to determine whether the water complies with the water quality and disinfection standards in R9-8-803, and
  4. The swimming pool or spa is not reopened until a test conducted under subsection (A)(3) indicates that the water complies with the water quality and disinfection standards in R9-8-803.
- B.** If liquid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed;
  2. The swimming pool or spa is closed for at least 24 hours;
  3. As much of the liquid feces as possible in the swimming pool or spa is removed and disposed of in a toilet;
  4. The swimming pool or spa is chemically treated with a shock treatment;
  5. The water in the swimming pool or spa is tested 24 hours after applying the shock treatment to determine whether the water complies with the water quality and disinfection standards in R9-8-803; and

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- 6. The swimming pool or spa is not reopened until a test conducted under subsection (B)(5) indicates that the water complies with the water quality and disinfection standards in R9-8-803.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-811. Natural and Semi-artificial Bathing Place and Artificial Lake Water Quality Standards**

An operator of a public or semipublic natural bathing place, a semi-artificial bathing place, or an artificial lake shall ensure that the public or semipublic natural bathing place, semi-artificial bathing place, or artificial lake meets the narrative and numeric water quality standards in 18 A.A.C. 11, Article 1 when the public or semi-public natural bathing place, semi-artificial bathing place, or artificial lake is open for water contact recreation.

**Historical Note**

Section repealed; new Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-812. Inspections**

- A. A regulatory authority shall inspect a bathing place to determine whether the bathing place complies with this Article.
- B. A regulatory authority shall inspect a public swimming pool at least once each month that the swimming pool is open for water contact recreation.

**Historical Note**

Section repealed; new Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-813. Cease and Desist and Abatement**

- A. Engaging in any practice in violation of this Article is a public nuisance.
- B. If a regulatory authority has reasonable cause to believe that an operator of a public or semipublic swimming pool or bathing place is creating or maintaining a public nuisance at the public or semipublic swimming pool or bathing place, the regulatory authority shall order the operator to discontinue the activity and to abate the public nuisance as follows:
  - 1. The regulatory authority shall serve on the operator a written cease and desist and abatement order requiring the operator to discontinue the activity and to remove the public nuisance at the operator's expense within 24 hours after service of the order. The order shall contain:
    - a. A reference to the statute or rule that is alleged to have been violated or on which the order is based,
    - b. A description of the operator's right to request a hearing, and
    - c. A description of the operator's right to request an informal settlement conference.
  - 2. The regulatory authority shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the operator or other party's last address of record with the regulatory authority or by any other method reasonably calculated to effect actual notice to the operator or other party.
  - 3. The operator or another party whose rights are determined by the order may obtain a hearing to appeal the order by filing a written notice of appeal with the regulatory authority within 30 days after service of the order. The operator or other party appealing the order shall serve the notice of appeal upon the regulatory authority by personal delivery or certified mail, return receipt requested, to the office of the regulatory authority or by any other method reasonably calculated to effect actual

notice on the regulatory authority. Appealing an order does not release the operator from the obligation to comply with the order.

- 4. If a notice of appeal is timely filed, the regulatory authority shall do one of the following:
  - a. If the regulatory authority is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 is delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
  - b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
- 5. If a written notice of appeal is not timely filed, the order becomes final.
- 6. A regulatory authority shall inspect the public or semi-public swimming pool or bathing place 24 hours after service of the order to determine whether the operator has complied with the order. If the regulatory authority determines upon inspection that the operator has not ceased the activity and abated the public nuisance, the regulatory authority shall cause the public nuisance to be removed.

**Historical Note**

Section repealed; new Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-814. Repealed**

**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-815. Repealed**

**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-816. Repealed**

**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-817. Repealed**

**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-818. Reserved**

**R9-8-819. Reserved**

**R9-8-820. Reserved**

**R9-8-821. Repealed**

**Historical note**

R9-8-821 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-822. Repealed**

**Historical note**

R9-8-822 repealed by summary action with an interim

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effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-823. Repealed****Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-824. Repealed****Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-825. Reserved****R9-8-826. Reserved****R9-8-827. Reserved****R9-8-828. Reserved****R9-8-829. Reserved****R9-8-830. Reserved****R9-8-831. Repealed****Historical Note**

R9-8-831 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-832. Repealed****Historical Note**

R9-8-832 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-833. Repealed****Historical Note**

R9-8-833 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-834. Repealed****Historical Note**

R9-8-834 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-835. Repealed****Historical Note**

R9-8-835 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted

summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-836. Repealed****Historical Note**

R9-8-836 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-837. Repealed****Historical Note**

R9-8-837 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-838. Repealed****Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-839. Repealed****Historical Note**

R9-8-839 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-840. Reserved****R9-8-841. Repealed****Historical Note**

R9-8-841 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**Exhibit A. Repealed****Historical Note**

Exhibit A repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-842. Repealed****Historical Note**

R9-8-842 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-843. Repealed**

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**Historical Note**

R9-8-843 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-844. Repealed****Historical Note**

R9-8-844 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-845. Repealed****Historical Note**

R9-8-845 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-846. Repealed****Historical Note**

R9-8-846 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

**R9-8-847. Repealed****Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-848. Reserved****R9-8-849. Reserved****R9-8-850. Reserved****R9-8-851. Repealed****Historical Note**

Editorial correction, spelling of "political" (Supp. 89-2). Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**R9-8-852. Repealed****Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

**ARTICLE 9. EXPIRED****R9-8-901. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-902. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section

expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-903. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-904. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-905. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-906. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-907. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-908. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-909. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-910. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-911. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-912. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-913. Expired**

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**Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-914. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-915. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-916. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**R9-8-917. Expired****Historical Note**

Adopted effective October 9, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 2056, effective March 31, 2002 (Supp. 02-2).

**ARTICLE 10. RENUMBERED**

*See Title 18, Chapter 5, Article 4.*

**ARTICLE 11. PRESERVATION, TRANSPORTATION, AND DISPOSITION OF HUMAN REMAINS**

*Article 11, consisting of Sections R9-8-1111, repealed effective April 10, 1997 (Supp. 97-2).*

**R9-8-1101. Reserved****R9-8-1102. Expired****Historical Note**

New Section recodified from R9-19-312 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 30, 2010 (Supp. 10-3).

**R9-8-1103. Expired****Historical Note**

New Section recodified from R9-19-314 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 30, 2010 (Supp. 10-3).

**R9-8-1104. Expired****Historical Note**

New Section recodified from R9-19-326 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 30, 2010 (Supp. 10-3).

**R9-8-1105. Expired****Historical Note**

New Section recodified from R9-19-321 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062,

effective September 30, 2010 (Supp. 10-3).

**R9-8-1106. Expired****Historical Note**

New Section recodified from R9-19-327 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 30, 2010 (Supp. 10-3).

**R9-8-1107. Expired****Historical Note**

New Section recodified from R9-19-330 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 30, 2010 (Supp. 10-3).

**R9-8-1108. Expired****Historical Note**

New Section recodified from R9-19-333 at 11 A.A.R. 3578, effective September 2, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 30, 2010 (Supp. 10-3).

**R9-8-1109. Reserved****R9-8-1110. Reserved****R9-8-1111. Repealed****Historical Note**

Repealed effective April 10, 1997 (Supp. 97-2).

**ARTICLE 12. RENUMBERED**

*See Title 18, Chapter 8, Article 6.*

**ARTICLE 13. LODGING ESTABLISHMENTS****R9-8-1301. Definitions**

In this Article, unless otherwise specified:

1. "Bathroom" means a structure or room that contains at least one toilet or urinal.
2. "Bedding" has the same meaning as in A.R.S. § 36-796.
3. "Clean" means free from dirt or debris.
4. "Common area" means any area of a lodging establishment, excluding areas within a lodging unit, that is provided by the lodging establishment for general use.
5. "Community kitchen" means a structure or room, excluding areas within a lodging unit, that is provided by a lodging establishment for preparing food.
6. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit that is received as payment.
7. "Distribution system" has the same meaning as in A.A.C. R18-4-103(B).
8. "Easily cleanable" means a characteristic of a surface that allows effective removal of dirt and debris by normal cleaning methods based on the material, design, construction, and installation of the surface.
9. "Faucet" means a fixture connected to a distribution system that provides and regulates the flow of potable water.
10. "Fixture" means an attachment to a structure.
11. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for human consumption.
12. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.

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- 13. "Lavatory" means a sink or a basin with a faucet that supplies potable water and with a drain connected to a sewage collection system.
- 14. "Lodger" means the same as "transient" in A.R.S. § 42-5070(F).
- 15. "Lodging establishment" or "hotels, motels, or tourist courts" specified in A.R.S. § 36-136(I)(8) is defined in this Article to mean a place or portion of a place that offers two or more lodging units for lodgers to use in exchange for compensation, if:
  - a. The lodging units are located on a single plot of land,
  - b. Two or more lodging units are offered by the same owner or lessee, and
  - c. The lodging units are offered for a lodger to use for less than 30 consecutive days.
- 16. "Lodging unit" means the total space offered for overnight use as a single unit to an individual lodger or party of lodgers, if the space includes:
  - a. Bedding;
  - b. Sleeping material; and
  - c. The following:
    - i. A structure or room that has 3 or more sides and a top; or
    - ii. A mobile home, house trailer, recreational vehicle as defined in A.R.S. § 33-2102, houseboat, or other similar structure at a fixed location.
- 17. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing substance.
- 18. "Owns" means to have the right to possess, use, and convey the interest.
- 19. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
- 20. "Potable water" means water safe for human consumption that meets the requirements of 18 A.A.C. 4 or satisfies the requirements in R9-8-1305(4).
- 21. "Public health nuisance" means the activities or conditions dangerous to public health that are be subject to A.R.S. § 36-601.
- 22. "Refuse" has the same meaning as in A.A.C. R18-13-302.
- 23. "Refuse container" means a receptacle that is capable of being moved and is used for refuse storage.
- 24. "Regulatory authority" means
  - a. The Department; or
  - b. Under delegation, the following entities as specified in A.R.S. § 36-136(E):
    - i. A local health department,
    - ii. A county environmental department, or
    - iii. A public health services district.
- 25. "Responsible party" means the person who owns a lodging establishment or a designee of a person who owns the lodging establishment.
- 26. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.
- 27. "Sewage" has the same meaning as in A.A.C. R18-9-101.
- 28. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.
- 29. "Shower head" means a fixture connected to a distribution system that allows potable water to fall on a user's body.
- 30. "Shower room" means a structure or a room that contains at least one shower head and at least one floor drain.
- 31. "Sleeping material" means any of the following:
  - a. A sheet,
  - b. A pillow,
  - c. A pillowcase,
  - d. A blanket, or
  - e. A sleeping bag.
- 32. "Stored" means holding refuse before the refuse is disposed of according to A.A.C. R18-13-311 and R18-13-312.
- 33. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
- 34. "Urinal" means a water-flushed, chemical-flushed, or no-flush upright basin used for urination only.
- 35. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1302. General Provisions**

- A. This Article does not apply to:
  - 1. The activities listed in A.R.S. § 42-5070(B);
  - 2. A lodging establishment located on federal or tribal land within the state;
  - 3. A lodging establishment that:
    - a. Is owner occupied, and
    - b. Has no more than six lodging units;
  - 4. A camping shelter as defined in R9-8-601(4); or
  - 5. A dormitory on the campus of a college or university.
- B. A violation of this Article is a public health nuisance and may be subject to abatement pursuant to A.R.S. § 36-602.
- C. Inspections of lodging establishments shall be conducted in accordance with A.R.S. § 36-136(I)(8) by the regulatory authority.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1303. Bathroom and Shower Room Management**

- A. A responsible party shall ensure that each lodger has access to a toilet, a lavatory, and a shower room, located either:
  - 1. Within the lodging unit the lodger is occupying or
  - 2. Within 200 feet from an entrance to the lodging unit.
- B. A responsible party shall ensure that each bathroom and shower room provided by the lodging establishment meets the requirements listed in Table 13.1.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**Table 13.1. Bathroom and Shower Room Management**

Requirement	Bathroom	Shower Room
Is clean and sanitary	X	X
Is ventilated by an openable window, air conditioning, or other mechanical device	X	X

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Has toilet paper	X	
Is maintained free from public health nuisance and free from insect and vermin infestation	X	X
Has refuse containers as specified in R9-8-1307(1)	X	X
Has surfaces that are easily cleanable, sanitary and free from gaps other than ventilation	X	X
Has single use soap or soap inside a dispenser	X	X
Has floors and walls of a non-absorbent material	X	X
Has single-use paper towels OR Hand dryers OR Cloth towels that are machine washed with detergent and machine dried before use by each separate individual or group of individuals who stay in a lodging unit	X	
Has cloth towels, which are machine washed with detergent and machine dried before use by each separate individual or group of individuals who stay in a lodging unit		X
Has a floor drain connected to a sewage collection system and, if built after the effective date of this Article, has floors that slope to the drain		X
Has potable water from all shower heads		X

**Historical Note**

Table 13.1 made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1304. Common Area Management**

A responsible party shall ensure that the following requirements are met:

1. Each common area:
  - a. Is clean and sanitary;
  - b. Is ventilated by an openable window, air conditioning, or other mechanical device;
  - c. Is maintained free from public health nuisance and free from insect and vermin infestation; and
  - d. Has refuse containers as specified in R9-8-1307(1).
2. Bedding and towels provided by the lodging establishment in each common area is:
  - a. Maintained in good-repair;
  - b. Clean and sanitary; and
  - c. Kept free of ectoparasites including bedbugs, lice, and mites.
3. A community kitchen provided by a lodging establishment complies with 9 A.A.C. 8, Article 1 if operating as a food establishment.
4. Any multi-use utensils and equipment provided by the lodging establishment are easily cleanable and either:
  - a. Are washed, rinsed, and made sanitary before use by each separate individual; or
  - b. A conspicuously located sign identifies which multi-use utensils and equipment provided by the lodging establishment are not washed, rinsed, and made sanitary before use by each separate individual.
5. A lodging establishment shall comply with 9 A.A.C. 8 Article 8, if within a common area, the lodging establishment provides a:
  - a. Natural bathing place as defined in A.A.C. R18-5-201,
  - b. Semi-artificial bathing place as defined in R9-8-801,
  - c. Spa as defined in A.A.C. R18-5-201, or
  - d. Swimming pool as defined in A.A.C. R18-5-201.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1305. Water Supply**

A responsible party shall ensure that the following requirements are met:

1. All water provided by the lodging establishment for human consumption is potable water.

2. Any source of water provided by the lodging establishment that is not potable is clearly identified with “not for human consumption” signage at each access point.
3. The potable water supply and distribution system provided by the lodging establishment is designed to provide sufficient quantity at a minimum pressure of 20 pounds per square inch at floor level at each bathroom, shower room, and permanent water fixture provided by the lodging establishment.
4. No lodging unit is more than 300 feet from a potable water source.
5. If water is hauled to the lodging establishment as a potable water supply, the water and transport shall meet the requirements of A.A.C. R18-4-214.
6. If potable water provided by the lodging establishment is not from a public water system as defined by 18 A.A.C. 4:
  - a. The potable water provided is tested prior to use with results of:
    - i. No coliform bacteria or other fecal indicator present, and
    - ii. Nitrate (as N) no greater than 10 mg/l.
  - b. The potable water provided is routinely monitored to determine:
    - i. The presence or absence of total coliform bacteria at least once every month of operation, and
    - ii. The concentration of nitrates at least once every three months.
  - c. Water samples collected in accordance with this section shall be analyzed by a laboratory that is licensed by the Arizona State Laboratory Office of Laboratory Services and licensed according to 9 A.A.C. 14, Article 6.
  - d. Records of water sample results analyzed in accordance with this section shall be:
    - i. Maintained at the lodging establishment for at least 12 months, and
    - ii. Made available to the Department upon request.
  - e. Written notification must be provided to the regulatory authority within 24 hours when any water quality requirement listed in subsection (a) is out-of-compliance.

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**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1306. Sewage Disposal**

A responsible party shall ensure that sewage and human excreta produced within the lodging establishment:

1. Does not create a public health nuisance; and
2. Is collected and disposed of by systems designed, constructed and operated in compliance with the requirements in 18 A.A.C. 9, Articles 3 and 7.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1307. Refuse Management**

A responsible party shall ensure that the following requirements are met:

1. The lodging establishment has conspicuously located refuse containers that are:
  - a. Constructed of non-absorbent material that is capable of withstanding expected use and remaining easily cleanable; and
  - b. Covered.
2. Refuse produced at the lodging establishment:
  - a. Does not create a public health nuisance; and
  - b. Is collected, stored, and disposed of according to 18 A.A.C. 13, Article 3.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1308. Lodging Unit Management**

A responsible party shall ensure that the following requirements are met:

1. Each lodging unit:
  - a. Is:
    - i. Clean and sanitary,
    - ii. Ventilated by an openable window, air conditioning, or other mechanical device, and
    - iii. Maintained free from public health nuisance and free from insect and vermin infestation.
  - b. Has refuse containers as specified in R9-8-1307(1).
  - c. Contains adequately sized sleeping material provided by a lodging establishment.
2. Bedding, sleeping material, and towels provided in a lodging unit are:
  - a. Maintained in good-repair;
  - b. Clean and sanitary; and
  - c. Kept free of ectoparasites including bedbugs, lice, and mites.
3. Cloth towels, sheets, and pillowcases provided in a lodging unit are machine washed with detergent and machine dried before use by each separate individual or group of individuals who stay in a lodging unit.
4. Multi-use utensils and equipment provided in a lodging unit meet the requirements in R9-8-1304(4).

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1309. Reserved**

**R9-8-1310. Reserved**

**R9-8-1311. Expired**

**Historical Note**

Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3256, effective June 17, 2002 (Supp. 02-3).

**R9-8-1312. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1313. Expired**

**Historical Note**

Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 2930, effective June 30, 2007 (Supp. 07-3).

**R9-8-1314. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1315. Expired**

**Historical Note**

Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3256, effective June 17, 2002 (Supp. 02-3).

**R9-8-1316. Reserved**

**R9-8-1317. Reserved**

**R9-8-1318. Reserved**

**R9-8-1319. Reserved**

**R9-8-1320. Reserved**

**R9-8-1321. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1322. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1323. Reserved**

**R9-8-1324. Reserved**

**R9-8-1325. Reserved**

**R9-8-1326. Reserved**

**R9-8-1327. Reserved**

**R9-8-1328. Reserved**

**R9-8-1329. Reserved**

**R9-8-1330. Reserved**

**R9-8-1331. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1332. Repealed**

**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1333. Repealed**

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**Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1334. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1335. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1336. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1337. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**R9-8-1338. Repealed****Historical Note**

Section repealed by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

**ARTICLE 14. REPEALED**

*Article 14, consisting of Sections R9-8-1411 thru R9-8-1413, repealed effective April 10, 1997 (Supp. 97-2).*

**R9-8-1411. Repealed****Historical Note**

Repealed effective April 10, 1997 (Supp. 97-2).

**R9-8-1412. Repealed****Historical Note**

Repealed effective April 10, 1997 (Supp. 97-2).

**R9-8-1413. Repealed****Historical Note**

Repealed effective April 10, 1997 (Supp. 97-2).

**ARTICLE 15. REPEALED**

*Article 15, consisting of Sections R9-8-1511 and R9-8-1512, repealed effective August 15, 1989 (Supp. 89-3).*

**ARTICLE 16. REPEALED****R9-8-1601. Reserved****R9-8-1602. Reserved****R9-8-1603. Reserved****R9-8-1604. Reserved****R9-8-1605. Reserved****R9-8-1606. Reserved****R9-8-1607. Reserved****R9-8-1608. Reserved****R9-8-1609. Reserved****R9-8-1610. Reserved****R9-8-1611. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1612. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1613. Reserved****R9-8-1614. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1615. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1616. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1617. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1618. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1619. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1620. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1621. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1622. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1623. Reserved****R9-8-1624. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1625. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).

## CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1626. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1627. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1628. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1629. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1630. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1631. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1632. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-6-1633. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1634. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1635. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1636. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1637. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1638. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).

Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1639. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1640. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1641. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1642. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1643. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1644. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1645. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1646. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1647. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1648. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**R9-8-1649. Repealed****Historical Note**

Adopted effective September 21, 1976 (Supp. 76-4).  
Repealed effective October 9, 1998 (Supp. 98-4).

**ARTICLE 17. RENUMBERED**

*See Title 18, Chapter 8, Article 4.*

**ARTICLE 18. RENUMBERED**

*See Title 18, Chapter 8, Article 2.*

**ARTICLE 19. EMERGENCY EXPIRED**

*Article 19 consisting of Sections R9-8-1901 through R19-8-1905 adopted as an emergency effective June 18, 1984, pursuant to*

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CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

*A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Language deleted (Supp. 87-2).*

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.

### 36-1751. Definitions

In this chapter, 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. "Mobile food unit" means a food establishment that is licensed by this state, that is readily movable and that dispenses food or beverages for immediate service and consumption and other incidental retail items from any vehicle as defined in section 28-101.
4. "Mobile food vendor" means any person who owns, controls, manages or leases a mobile food unit or contracts with a person to prepare foods and vend from, drive or operate a mobile food unit.

36-1761. [Mobile food vendors; mobile food units; rules; health and safety licensing standards](#)

A. The director shall adopt rules that do all of the following:

1. Establish health and safety licensing standards for mobile food vendors and mobile food units that apply on a statewide basis. The licensing standards shall:

(a) Include three categories of mobile food units that are based on the type of food dispensed and the amount of handling and preparation required.

(b) Include general physical and operation requirements of a mobile food unit, including:

(i) Installation of compressors, generators and similar mechanical units that are not an integral part of the food preparation or storage equipment.

(ii) Necessary commissary or other servicing area agreements.

(iii) Vehicle and equipment cleaning requirements.

(iv) Waste disposal requirements during and after operation on public or private property, which may not include the size or dimensions of any required solid waste receptacle.

2. Establish statewide inspection standards that are based on objective factors for use by the county health departments.

3. Establish a licensing process for mobile food units that does all of the following:

(a) Requires a separate license for each mobile food unit.

(b) Requires a license to be renewed annually.

(c) Delegates to the county health department in the county where the mobile food vendor's commissary is located the licensing and health and safety inspection for state licensure using the statewide inspection standards adopted pursuant to this section. The licensing process shall require random inspections by county health departments at no additional cost except as provided in section 11-269.24. A mobile food unit license issued by a county health department pursuant to this section shall have reciprocity in each county of this state. A county health department may enforce the statewide inspection standards regardless of where the license was issued.

(d) Requires all employees of a mobile food vendor to have a valid food handler card or a certificate from an accredited food handler training class as specified in rule by the department.

(e) Requires that the license be displayed in the mobile food vendor's operating location in a conspicuous location for public view.

B. The rules adopted pursuant to this section may not do either of the following:

1. Require a mobile food vendor or mobile food unit to operate a specific distance from the perimeter of an existing commercial establishment or restaurant.

2. Address the operating hours of a mobile food unit.

C. Except as otherwise specified in this chapter, the director may adopt rules that are substantively the same as the regulations that are in place on August 3, 2018 in Maricopa county regarding mobile food establishments.

D. This section does not preclude a city, town or county from requiring a mobile food vendor to be licensed if the licensing system includes a background check or identification and fingerprinting of the owner of the mobile food vending operation.



**CITIZENS CLEAN ELECTIONS COMMISSION**  
Title 2, Chapter 20, Article 7, Use of Funds and Repayment

**Amend:** R2-20-701



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (R20-0604)**  
Title 2, Chapter 20, Article 7

**Amend:** R2-20-701

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### **Summary:**

This rulemaking from the Citizens Clean Election Commission (Commission), seeks to amend R2-20-701 related to Purpose and Scope of Article 7, Use of Funds and Repayment. Specifically, this rulemaking seeks to add language clarifying what constitutes unlawful campaign contributions pursuant to A.R.S. § 16-948(C).

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

Yes. The Commission cites both general and specific authority for these rules.

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

No. 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 Commission did not review or rely on any study in conducting this rulemaking.

**4. Summary of the agency's economic impact analysis:**

According to the Commission, the proposed amendment is intended to smooth the Commission's rules regarding participating candidates expenditures as provided by A.R.S. § 16-948(C). Those directly impacted by rulemaking include candidates for state and legislative office, as well as political parties and certain organizations granted status under section 501(a) of the Internal Revenue Code. Other entities making expenditures or contributions in state or legislative elections are directly affected. The Commission believes there is little consumer, economic, or small business impact. They state the amendment only concerns participating candidates.

**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 Commission believes the amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that smoothing the statutes application to affected parties is necessary.

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

The Commission indicates there is a probable cost to participating candidates, as well as political parties and certain organizations covered by section 501(a) of the Internal Revenue Code. The Commission believes that because this rule amendment clarifies existing practices, any business directly affected will benefit and incur no costs from the change. They believe the benefit arises directly from the clarification, which can reduce compliance costs. No political subdivision of this state is directly impacted.

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

No. The Commission did not make any changes to the proposed rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Commission did not receive any comments in conducting this rulemaking.

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

Not applicable. The rules do not require a permit or license.

**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. There is no corresponding federal law.

**11. Conclusion**

As amended by Proposition 306, the Commission's exemption from the Administrative Procedure Act (APA) in A.R.S. § 16-965(C) was removed. Therefore, this rulemaking was submitted to GRRC for review and consideration pursuant to the APA.

Proposition 306 did not remove other language from A.R.S. § 16-956(C) regarding the Commission's rulemaking procedures and processes. For example, the statute still retains language that requires the Commission to propose and adopt rules in public meetings, with at least 60 days allowed for interested parties to comment after the rules are proposed.

While it appears A.R.S. § 16-956(C) outlines distinct rulemaking procedures for the Commission, it still requires that "[a]ny rules given *final approval* in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register." Pursuant to the APA, final approval for rulemakings comes from either GRRC or the Attorney General. *See* A.R.S. § 41-1024(H) ("An agency shall not file a final rule with the secretary of state without prior approval from the council....").

Proposition 306 also did not remove language in A.R.S. § 16-956(D), which says that "[r]ules adopted by the commission are not effective until January 1 in the year following adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable." The Commission voted unanimously to make these rule amendments immediately effective.

It is Council staff's opinion that the rule amendments cannot be immediately effective and enforceable until they are given final approval by the Council. Council staff has no objection to an immediate effective date due to the language in A.R.S. 16-956(D), and recommends that the rulemaking be approved with an immediate effective date. The rule amendments would be effective on the day the Commission files the Certificate of Approval for this rulemaking with the Secretary of State's office after approval by the Council.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
**Amy B. Chan**  
Commissioners

**State of Arizona**  
**Citizens Clean Elections Commission**

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April 17, 2020

Governor's Regulatory Review Council  
1501 N. 15<sup>th</sup> Ave.  
Phoenix, AZ 85007

**Re: Request for approval of amendment to A.A.C. R2-20-701**

Dear Councilmembers and Staff:

Pursuant to A.R.S. §§ 16-956(C), (D) and § 41-1024(C), please find the Arizona Citizens Clean Elections Commission's Amendment to A.A.C. R2-20-209 and economic impact statement.

In accordance with A.R.S. § 16-956(D) and Proposition 306 the Commission voted to give the rule an immediate effective date of February 27, 2020.

I request approval by the Council.

In summary:

- The record closed on February 27, 2020.
- The amendment does not relate to a 5-year-review report.
- The amendment does not establish a new fee.
- The amendment does not contain a fee increase.
- The rule was made immediately effective by the Commission on February 27, 2020 pursuant to A.R.S. § 16-956(D).
- The preamble had no study to disclose.
- The amendment does not require any new employees.
- The rulemaking item includes: the final rule and the Economic, Small Business and Consumer Impact Statement.
- No written comments were received.

- No analysis of the amendments impact on competitiveness with other states was submitted.
- No material was incorporated by reference.
- Authorizing statutes include:
  - General: A.R.S § 16-956(A)(7)
  - Specific: A.R.S. § 16-948.
- There are no cross-referenced definitions.

Please contact me with any questions.

Sincerely,

S/Thomas M. Collins  
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

1. Article, Part, or Section Affected (as applicable)      Rulemaking Action  
A.A.C. R2-20-701, Purpose and Scope      Amend

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

Authorizing statute: A.R.S. § 16-956(A)(6), *Id.* § 16-956(A)(7)

Implementing statute: A.R.S. § 16-948(C).

The effective date of the rule:

February 27, 2020.

- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5): The Citizens Clean Elections Commission voted unanimously to give these amendments immediate affect under A.R.S. §§ 16-956(C), 16-956(D) because the election cycle is well underway.
- 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. 115, January 17, 2020.

Notice of Proposed Rulemaking: 26 A.A.C. 101, January 17, 2020.

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

Name: Thomas M. Collins

Address: 1616 W. Adams, Suite 110, Phoenix, AZ 85007

Telephone:      Include area code, (602) 364-3477

E-mail:            ccec@azcleaselections.gov

Web site:         azcleaselections.gov

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

Regulatory Review Council Member John Sundt, is intended to smooth the Commission's rules regarding participating candidate expenditures as provided by A.R.S. § 16-948(C).

- 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:** Not applicable.
- 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 Commission believes there is little consumer, economic, or small business impact. The amendment only concerns participating candidates.
- 10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:** Not applicable.
- 11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:** None received.
- 12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

  - 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:** No.
  - 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.
  - c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:** No.
- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:** None.
- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**  
Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

**ARTICLE 7. USE OF FUNDS AND REPAYMENT**

**SECTION**

**R2-20-701. PURPOSE AND SCOPE.**

**ARTICLE 7. USE OF FUNDS AND REPAYMENT**

**R2-20-701 PURPOSE AND SCOPE.**

Notwithstanding any other provision of the Rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party; and subject to the foregoing, may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
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***MEMORANDUM***

**To: Governor's Regulatory Review Council**

**From: Thomas M. Collins**

**Date: 3.16.2020**

**Subject: Economic, Small Business and Consumer Impact Statement R2-20-701**

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1. An identification of the proposed rule making.

R2-20-701. Amended.

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

Candidates for state and legislative office are directly affected, as are political parties and certain organizations granted status under section 501(a) of the Internal Revenue Code.

Other entities making expenditures or contributions in state or legislative elections are directly affected.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

Agency probable costs: The agency does not anticipate any additional FTEs, nor additional costs. The agency's view is that this rule change is a clarifying and stylistic amendment and not one that can or will increase any agency cost.

Agency probable benefits: The rule is intended to smooth of any issues in enforcing recent amendments to A.R.S. 16-948. This reinforces the statutory change and may provide a benefit of a clear application of the statute in rule.

No other agency is directly affected.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

Because this rule amendment clarifies existing practices, any business directly affected will benefit and incur no costs from the change. The benefit arises directly from the clarification, which can reduce compliance costs.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

The agency did and does not anticipate any impact on private or public employment in any of the directly affected entities.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

To the best of the agency's knowledge no small businesses are subject to its amended rule.

(b) The administrative and other costs required for compliance with the proposed rule making.

If there was a small business impact, it would be an decrease in compliance costs

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The agency would be in the future open to any of the methods prescribed in section 41-1035. However, any anticipated impact is de minimis.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

There is a probable cost to participating candidates, as well as political parties and certain organizations covered by section 501(a) of the Internal Revenue Code. On the other hand the rule smooths the application of the extant statute to those entities and individuals.

6. A statement of the probable effect on state revenues.

This rule does not have any impact on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that smoothing the statutes application to affected parties is necessary.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.

Not applicable.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Commission amended this rule at the prompting of a Council member to ensure smooth application of a particular statutory change.

## CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

and deliver the statement to the Executive Director for placement in the applicable case file.

- C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection (A) of this Section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-604. Sanctions**

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 7. USE OF FUNDS AND REPAYMENT****R2-20-701. Purpose and Scope**

A participating candidate may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-702. Use of Campaign Funds**

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. A participating candidate shall not use funds in the candidate's campaign account for:
1. Costs of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign. This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance.
  2. Food and beverages for staff and volunteers exceeding \$11 for breakfast, \$16 for lunch, and \$27 for dinner, per person.
  3. Personal use, which includes, but is not limited to, any item listed below:
    - a. Household food items or supplies.
    - b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
    - c. Tuition payments, other than those associated with training campaign staff.
    - d. Mortgage, loan, rent, lease or utility payments:
      - i. For any part of any personal residence of the candidate or a member of the candidate's family; or
      - ii. For real or personal property that is owned or leased by the candidate or a member of the can-

didate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

- e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
  - f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
  - g. Gifts or donations.
  - h. Extended warranties or other similar purchase options that extend beyond the campaign.
4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.
- C. Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80 percent of the original purchase price including the cost of accessories.
- D. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The sum of early contributions received plus public funds disbursed through the primary election period; less
  2. All other expenditures made during and for the exploratory, qualifying and primary election periods.
- E. During the general election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The amount of public funds disbursed during and for the general election period; less
  2. All other expenditures made during and for the general election period.
- F. Transportation expenses.
1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
    - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itin-

## 16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

## 16-948. Controls on participating candidates' campaign accounts

(Caution: 1998 Prop. 105 applies)

A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under section 16-945 or 16-946.

B. A candidate may designate other persons with authority to withdraw monies from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

C. The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1.4 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. The following payments made directly or indirectly from a participating candidate's campaign account are unlawful contributions:

1. A payment made to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election.

2. A payment made directly or indirectly to a political party.

D. Notwithstanding subsection C of this section, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.

E. Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

F. A participating candidate shall not use clean elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity that is owned by that participating candidate or in which the candidate has a controlling interest. The use of goods or services that are prohibited by this subsection is deemed to be an unlawful in-kind contribution to the participating candidate.

**CITIZENS CLEAN ELECTIONS COMMISSION**  
Title 2, Chapter 20, Article 7, Use of Funds and Repayment

**Amend:** R2-20-702.01



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (R20-0605)**  
Title 2, Chapter 20, Article 7

**Amend:** R2-20-702.01

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### **Summary:**

This rulemaking from the Citizens Clean Election Commission (Commission), seeks to amend R2-20-702.01 related to Use of Assets under Article 7, Use of Funds and Repayment. Specifically, this rulemaking seeks to add language clarifying what constitutes unlawful campaign contributions pursuant to A.R.S. § 16-948(C).

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

Yes. The Commission cites both general and specific authority for these rules.

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

No. 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 Commission did not review or rely on any study in conducting this rulemaking.

**4. Summary of the agency's economic impact analysis:**

According to the Commission, the proposed amendment is intended to smooth the Commission's rules regarding participating candidates expenditures as provided by A.R.S. § 16-948(C). Those directly impacted by rulemaking include candidates for state and legislative office as well as political parties and certain organizations granted status under section 501(a) of the Internal Revenue Code. Other entities making expenditures or contributions in state or legislative elections are directly affected. The Commission states that because the rule amendment does not substantively change the underlying Commission investigative process, there is no economic, small business, or consumer impact cost. They believe the clarification will have a benefit because a clearer rule lowers compliance costs.

**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 Commission believes the amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that smoothing the statutes application to affected parties is necessary.

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

The Commission indicates there is a probable cost to participating candidates, as well political parties and certain organizations covered by section 501(a) of the Internal Revenue Code. The Commission believes that because this rule amendment clarifies existing practices, any business directly affected will benefit and incur no costs from the change. They believe the benefit arises directly from the clarification, which can reduce compliance costs. No political subdivision of this state is directly impacted.

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

No. The Commission did not make any changes to the proposed rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Commission did not receive any comments in conducting this rulemaking.

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

Not applicable. The rules do not require a permit or license.

**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. There is no corresponding federal law.

**11. Conclusion**

As amended by Proposition 306, the Commission's exemption from the Administrative Procedure Act (APA) in A.R.S. § 16-965(C) was removed. Therefore, this rulemaking was submitted to GRRC for review and consideration pursuant to the APA.

Proposition 306 did not remove other language from A.R.S. § 16-956(C) regarding the Commission's rulemaking procedures and processes. For example, the statute still retains language that requires the Commission to propose and adopt rules in public meetings, with at least 60 days allowed for interested parties to comment after the rules are proposed.

While it appears A.R.S. § 16-956(C) outlines distinct rulemaking procedures for the Commission, it still requires that "[a]ny rules given *final approval* in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register." Pursuant to the APA, final approval for rulemakings comes from either GRRC or the Attorney General. *See* A.R.S. § 41-1024(H) ("An agency shall not file a final rule with the secretary of state without prior approval from the council....").

Proposition 306 also did not remove language in A.R.S. § 16-956(D), which says that "[r]ules adopted by the commission are not effective until January 1 in the year following adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable." The Commission voted unanimously to make these rule amendments immediately effective.

It is Council staff's opinion that the rule amendments cannot be immediately effective and enforceable until they are given final approval by the Council. Council staff has no objection to an immediate effective date due to the language in A.R.S. 16-956(D), and recommends that the rulemaking be approved with an immediate effective date. The rule amendments would be effective on the day the Commission files the Certificate of Approval for this rulemaking with the Secretary of State's office after approval by the Council.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
**Amy B. Chan**  
Commissioners

**State of Arizona**  
**Citizens Clean Elections Commission**

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - [www.azcleanelections.gov](http://www.azcleanelections.gov)

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April 17, 2020

Governor's Regulatory Review Council  
1501 N. 15<sup>th</sup> Ave.  
Phoenix, AZ 85007

**Re: Request for approval of amendment to A.A.C. R2-20-702.01**

Dear Councilmembers and Staff:

Pursuant to A.R.S. §§ 16-956(C), (D) and § 41-1024(C), please find the Arizona Citizens Clean Elections Commission's Amendment to A.A.C. R2-20-209 and economic impact statement.

In accordance with A.R.S. § 16-956(D) and Proposition 306 the Commission voted to give the rule an immediate effective date of February 27, 2020.

I request approval by the Council.

In summary:

- The record closed on February 27, 2020.
- The amendment does not relate to a 5-year-review report.
- The amendment does not establish a new fee.
- The amendment does not contain a fee increase.
- The rule was made immediately effective by the Commission on February 27, 2020 pursuant to A.R.S. § 16-956(D).
- The preamble had no study to disclose.
- The amendment does not require any new employees.
- The rulemaking item includes: the final rule and the Economic, Small Business and Consumer Impact Statement.
- No written comments were received.

- No analysis of the amendments impact on competitiveness with other states was submitted.
- No material was incorporated by reference.
- Authorizing statutes include:
  - General: A.R.S § 16-956(A)(7)
  - Specific: A.R.S. § 16-948.
- There are no cross-referenced definitions.

Please contact me with any questions.

Sincerely,

S/Thomas M. Collins  
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| A.A.C. R2-20-702.01, Use of Assets                           | Amend                    |

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

Authorizing statute: A.R.S. § 16-956(A)(6), *Id.* § 16-956(A)(7)

Implementing statute: A.R.S. § 16-948(C).

**The effective date of the rule:**

March 9, 2020.

- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):** The Citizens Clean Elections Commission voted unanimously to give these amendments immediate affect under A.R.S. §§ 16-956(C), 16-956(D) because the election cycle is well underway.
- 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. 115, January 17, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 102, January 17, 2020

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

Name: Thomas M. Collins

Address: 1616 W. Adams, Suite 110, Phoenix, AZ 85007

Telephone: (602) 364-3477

E-mail: ccec@azcleaselections.gov

Web site: azcleaselections.gov

- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:** The proposed amendment, drafted by Clean Elections

staff based on a comment by Governor's Regulatory Review Council Member John Sundt, is intended to smooth the Commission's rules regarding participating candidate expenditures as provided by A.R.S. § 16-948(C).

- 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:** Not applicable.
- 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:** Because the rule amendment does not substantively change the underlying Commission investigative process, there is not economic, small business, or consumer impact cost. The clarification will have an economic, small business and consumer benefit because a clearer rule lowers compliance costs.
- 10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:** Not applicable.
- 11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:** None received.
- 12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

  - 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:** No.
  - 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.
  - c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:** No.
- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:** None.
- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:** Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

**ARTICLE 7. USE OF FUNDS AND REPAYMENT**

**SECTION**

**R2-20-702.01. USE OF ASSETS**

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate. Notwithstanding any other provision of the Rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
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***MEMORANDUM***

**To: Governor's Regulatory Review Council**

**From: Thomas M. Collins**

**Date: 3.16.2020**

**Subject: Economic, Small Business and Consumer Impact Statement R2-20-702.01**

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1. An identification of the proposed rule making.

R2-20-702.01. Amended.

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

Candidates for state and legislative office are directly affected, as are political parties and certain organizations granted status under section 501(a) of the Internal Revenue Code.

Other entities making expenditures or contributions in state or legislative elections are directly affected.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

Agency probable costs: The agency does not anticipate any additional FTEs, nor additional costs, The agency's view is that this rule change is a clarifying and stylistic amendment and not one that can or will increase any agency cost.

Agency probable benefits: The rule is intended to smooth of any issues in enforcing recent amendments to A.R.S. 16-948. This reinforces the statutory change and may provide a benefit of a clear application of the statute in rule.

No other agency is directly affected.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

Because this rule amendment clarifies existing practices, any business directly affected will benefit and incur no costs from the change. The benefit arises directly from the clarification, which can reduce compliance costs.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

The agency did and does not anticipate any impact on private or public employment in any of the directly affected entities.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

To the best of the agency's knowledge no small businesses are subject to its amended rule.

(b) The administrative and other costs required for compliance with the proposed rule making.

If there was a small business impact, it would be an decrease in compliance costs

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The agency would be in the future open to any of the methods prescribed in section 41-1035. However, any anticipated impact is de minimis.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

There is a probable cost to participating candidates, as well as political parties and certain organizations covered by section 501(a) of the Internal Revenue Code. On the other hand the rule smooths the application of the extant statute to those entities and individuals.

6. A statement of the probable effect on state revenues.

This rule does not have any impact on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that smoothing the statutes application to affected parties is necessary.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.

Not applicable.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Commission amended this rule at the prompting of a Council member to ensure smooth application of a particular statutory change.

## CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

erary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.

- b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
3. Use of airplanes.
  - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
  - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 17 A.A.R. 1267, effective April 12, 2011 (Supp. 11-2). Since language in subsections R2-20-702(C)(3)(d)(i) and (ii) and R2-20-702(C)(4) and (5) are substantively identical, the Commission requested to remove the redundant language in R2-20-702(C)(3)(d)(i) and (ii) under A.R.S. § 41-1011(C), Office File No. M11-345, filed October 3, 2011 (Supp. 11-2). Amended by exempt rulemaking at 19 A.A.R. 1702, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 22 A.A.R. 2906, effective January 1, 2017 (Supp. 16-3). Amended by exempt rulemaking at 23 A.A.R. 2342, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2120, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 309, with an immediate effective date of January 23, 2020 (Supp. 20-1).

**R2-20-702.01. Use of Assets**

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

**Historical Note**

New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2).

**R2-20-703. Documentation for Direct Campaign Expenditures**

- A.** In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:
1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
  2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
  3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$200 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B.** Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fundraising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- C.** Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by final exempt rulemaking at 21 A.A.R. 1641, effective July 23,

## 16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

## 16-948. Controls on participating candidates' campaign accounts

(Caution: 1998 Prop. 105 applies)

A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under section 16-945 or 16-946.

B. A candidate may designate other persons with authority to withdraw monies from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

C. The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1.4 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. The following payments made directly or indirectly from a participating candidate's campaign account are unlawful contributions:

1. A payment made to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election.

2. A payment made directly or indirectly to a political party.

D. Notwithstanding subsection C of this section, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.

E. Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

F. A participating candidate shall not use clean elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity that is owned by that participating candidate or in which the candidate has a controlling interest. The use of goods or services that are prohibited by this subsection is deemed to be an unlawful in-kind contribution to the participating candidate.

**CITIZENS CLEAN ELECTIONS COMMISSION**  
Title 2, Chapter 20, Article 7, Use of Funds and Repayment

**Amend:** R2-20-703.01



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (R20-0603)**  
Title 2, Chapter 20, Article 7

**Amend:** R2-20-703.01

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### **Summary:**

This rulemaking from the Citizens Clean Election Commission (Commission), seeks to amend R2-20-703.01 related to Campaign Consultants under Article 7, Use of Funds and Repayment. Specifically, this rulemaking seeks to add language clarifying what constitutes unlawful campaign contributions pursuant to A.R.S. § 16-948(C).

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

Yes. The Commission cites both general and specific authority for these rules.

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

No. 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 Commission did not review or rely on any study in conducting this rulemaking.

**4. Summary of the agency's economic impact analysis:**

According to the Commission, the rulemaking is intended to clarify and reemphasize the terms of Proposition 306 which bars candidates from making expenditures to political parties and certain federal tax-exempt organizations. Those directly impacted by rulemaking include candidates for state and legislative office as well as political parties and certain organizations granted status under section 501(a) of the Internal Revenue Code. Other entities making expenditures or contributions in state or legislative elections are directly affected. The Commission indicates there is a probable cost but the rule is intended to smooth the application of the extant statute.

**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 Commission believes the amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that smoothing the statute's application to affected parties is necessary.

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

The rule amendment may have some impact on individuals who would otherwise have run for office or have purchased certain goods and services in the past, as well as small business that may have made such purchases. No political subdivision of the state is directly impacted. The Commission indicates that because this rule amendment clarifies existing practices, any business directly affected will benefit and incur no costs from the change. They believe the benefit arises directly from the clarification, which can reduce compliance costs.

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

No. The Commission did not make any changes to the proposed rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Commission did not receive any comments in conducting this rulemaking.

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

Not applicable. The rules do not require a permit or license.

**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. There is no corresponding federal law.

**11. Conclusion**

As amended by Proposition 306, the Commission's exemption from the Administrative Procedure Act (APA) in A.R.S. § 16-965(C) was removed. Therefore, this rulemaking was submitted to GRRC for review and consideration pursuant to the APA.

Proposition 306 did not remove other language from A.R.S. § 16-956(C) regarding the Commission's rulemaking procedures and processes. For example, the statute still retains language that requires the Commission to propose and adopt rules in public meetings, with at least 60 days allowed for interested parties to comment after the rules are proposed.

While it appears A.R.S. § 16-956(C) outlines distinct rulemaking procedures for the Commission, it still requires that "[a]ny rules given *final approval* in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register." Pursuant to the APA, final approval for rulemakings comes from either GRRC or the Attorney General. *See* A.R.S. § 41-1024(H) ("An agency shall not file a final rule with the secretary of state without prior approval from the council....").

Proposition 306 also did not remove language in A.R.S. § 16-956(D), which says that "[r]ules adopted by the commission are not effective until January 1 in the year following adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable." The Commission voted unanimously to make these rule amendments immediately effective.

It is Council staff's opinion that the rule amendments cannot be immediately effective and enforceable until they are given final approval by the Council. Council staff has no objection to an immediate effective date due to the language in A.R.S. 16-956(D), and recommends that the rulemaking be approved with an immediate effective date. The rule amendments would be effective on the day the Commission files the Certificate of Approval for this rulemaking with the Secretary of State's office after approval by the Council.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
**Amy B. Chan**  
Commissioners

**State of Arizona**  
**Citizens Clean Elections Commission**

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - [www.azcleelections.gov](http://www.azcleelections.gov)

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April 17, 2020

Governor's Regulatory Review Council  
1501 N. 15<sup>th</sup> Ave.  
Phoenix, AZ 85007

**Re: Request for approval of amendment to A.A.C. R2-20-703.01**

Dear Councilmembers and Staff:

Pursuant to A.R.S. §§ 16-956(C), (D) and § 41-1024(C), please find the Arizona Citizens Clean Elections Commission's Amendment to A.A.C. R2-20-209 and economic impact statement.

In accordance with A.R.S. § 16-956(D) and Proposition 306 the Commission voted to give the rule an immediate effective date of March 16, 2020.

I request approval by the Council.

In summary:

- The record closed on March 16, 2020.
- The amendment does not relate to a 5-year-review report.
- The amendment does not establish a new fee.
- The amendment does not contain a fee increase.
- The rule was made immediately effective by the Commission on March 16, 2020 pursuant to A.R.S. § 16-956(D).
- The preamble had no study to disclose.
- The amendment does not require any new employees.
- The rulemaking item includes: the final rule and the Economic, Small Business and Consumer Impact Statement.
- No written comments were received.

- No analysis of the amendments impact on competitiveness with other states was submitted.
- No material was incorporated by reference.
- Authorizing statutes include:
  - General: A.R.S § 16-956(A)(7)
  - Specific: A.R.S. § 16-948.
- There are no cross-referenced definitions.

Please contact me with any questions.

Sincerely,

S/Thomas M. Collins  
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

1. Article, Part, or Section Affected (as applicable)      Rulemaking Action  
A.A.C. R2-20-703.01, Campaign Consultants      Amend

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

Authorizing statute: A.R.S. § 16-956(A)(6), *Id.* § 16-956(A)(7)

Implementing statute: A.R.S. § 16-948(C).

The effective date of the rule:

March 16, 2020.

- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5): The Citizens Clean Elections Commission voted unanimously to give these amendments immediate affect under A.R.S. §§ 16-956(C), 16-956(D) because the election cycle is well underway.
- 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. 116, January 17, 2020.

Notice of Proposed Rulemaking: 26 A.A.R. 104, January 17, 2020.

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

Name: Thomas M. Collins

Address: 1616 W. Adams, Suite 110, Phoenix, AZ 85007

Telephone: (602) 364-3477

E-mail: ccec@azcleanelections.gov

Web site: azcleanelections.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: A.A.C. R2-20-703.01: This amendment is designed to

clarify and reemphasize the terms of Proposition 306 which bars candidates from making expenditures to political parties and certain federal tax-exempt organizations.

**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:** Not applicable.

**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 rule amendment may have some impact on individuals who would otherwise have run for office or have purchased certain goods and services in the past, as well as small business that may have made such purchases.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:** Not applicable.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:** None received.

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

**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:** No.

**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.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:** No.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:** None.

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

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION  
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION  
ARTICLE 7. USE OF FUNDS AND REPAYMENT**

**Section R2-20-703.01. Campaign Consultants**

**ARTICLE 7. USE OF FUNDS AND REPAYMENT**

**Section R2-20-703.01. Campaign Consultants**

A. No Change.

B. No Change.

C. No Change.

1. No Change.

2. No Change.

3. No Change.

D. No Change.

E. Notwithstanding any other provision of the Rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Galen D. Paton**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
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**State of Arizona**  
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***MEMORANDUM***

**To: Governor's Regulatory Review Council**

**From: Thomas M. Collins**

**Date: 3.16.2020**

**Subject: Economic, Small Business and Consumer Impact Statement R2-20-703.01**

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1. An identification of the proposed rule making.

R2-20-703.01. Amended.

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

Candidates for state and legislative office are directly affected, as are political parties and certain organizations granted status under section 501(a) of the Internal Revenue Code.

Other entities making expenditures or contributions in state or legislative elections are directly affected.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

Agency probable costs: The agency does not anticipate any additional FTEs, nor additional costs. The agency's view is that this rule change is a clarifying and stylistic amendment and not one that can or will increase any agency cost.

Agency probable benefits: The rule is intended to smooth of any issues in enforcing recent amendments to A.R.S. 16-948. This reinforces the statutory change and may provide a benefit of a clear application of the statute in rule.

No other agency is directly affected.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

Because this rule amendment clarifies existing practices, any business directly affected will benefit and incur no costs from the change. The benefit arises directly from the clarification, which can reduce compliance costs.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

The agency did and does not anticipate any impact on private or public employment in any of the directly affected entities.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

To the best of the agency's knowledge no small businesses are subject to its amended rule.

(b) The administrative and other costs required for compliance with the proposed rule making.

If there was a small business impact, it would be an decrease in compliance costs

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The agency would be in the future open to any of the methods prescribed in section 41-1035. However, any anticipated impact is de minimis.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

There is a probable cost to participating candidates, as well as political parties and certain organizations covered by section 501(a) of the Internal Revenue Code. On the other hand the rule smooths the application of the extant statute to those entities and individuals.

6. A statement of the probable effect on state revenues.

This rule does not have any impact on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that smoothing the statutes application to affected parties is necessary.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.

Not applicable.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Commission amended this rule at the prompting of a Council member to ensure smooth application of a particular statutory change.

## CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 133, effective January 1, 2017 (Supp. 16-4).

**R2-20-703.01. Campaign Consultants**

- A. For purposes of this rule "Campaign Consultant" means any person paid by a participating candidate's campaign or who provides services that are ordinarily charged to a person, except services provided for in A.R.S. § 16-911(6)(b).
- B. A participating candidate may engage campaign consultants.
- C. A participating candidate may only advance a campaign consultant for services such as consulting, communications, field employees, canvassers, mailers, auto-dialers, telephone town halls, electronic communications and other advertising purchases and other campaign service if an itemized invoice identifying the value of the services is provided directly to that particular candidate at the time of the advance payment.
  - 1. Providing payment for such services as described in subsection (C) of this rule in the absence of an itemized invoice or advance payment for such services shall be deemed not to be a direct campaign expenditure.
  - 2. A participating candidate may advance payment for postage upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of postage.
  - 3. A participating candidate may advance payment for advertising that customarily requires pre-payment upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of the advertisement.
- D. The Commission shall be included in the mail batch for all mailers and invitations. The Commission shall also be provided with documentation from the mail house, printer or other original source, showing the number of mailers printed and the number of households to which a mailer was sent. Failure to provide this information within 7 days after the mailer has been mailed may be considered as evidence the mailer was not for direct campaign purposes.

**Historical Note**

New Section made by exempt rulemaking at 23 A.A.R. 2344, effective July 20, 2017 (Supp. 17-3).

**R2-20-704. Repayment**

- A. In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
  - 1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
  - 2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible.
  - 3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
  - 4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's current election campaign account, and any additional funds raised subject to the limitations and prohibitions of the Act.
  - 5. The Commission may withhold the portion of funds required to be repaid from future payments to a partici-

pating candidate if the Commission has made a repayment determination.

- B. The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
  - 1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
  - 2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
  - 3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
  - 4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
  - 5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any federal, state or local taxes on such income.
  - 6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
  - 1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
  - 2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D. Repayment period.
  - 1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.

## 16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

## 16-948. Controls on participating candidates' campaign accounts

(Caution: 1998 Prop. 105 applies)

A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under section 16-945 or 16-946.

B. A candidate may designate other persons with authority to withdraw monies from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

C. The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1.4 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. The following payments made directly or indirectly from a participating candidate's campaign account are unlawful contributions:

1. A payment made to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election.

2. A payment made directly or indirectly to a political party.

D. Notwithstanding subsection C of this section, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.

E. Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

F. A participating candidate shall not use clean elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity that is owned by that participating candidate or in which the candidate has a controlling interest. The use of goods or services that are prohibited by this subsection is deemed to be an unlawful in-kind contribution to the participating candidate.

**D-7**

**DEPARTMENT OF AGRICULTURE**

Title 3, Chapter 8, Article 1, General and Administrative Provisions

**Amend:** R3-8-103



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT: DEPARTMENT OF AGRICULTURE (R20-0601)**  
Title 3, Chapter 8, Article 1

**Amend:** R3-8-103

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### **Summary:**

This expedited rulemaking from the Pest Management Division (Division) of the Department of Agriculture (Department) seeks to amend R3-8-103 related to fees. Specifically, in 2018, the Division states it received significant feedback from its customers requesting that licensing fees be temporarily reduced. The Division agreed with this recommendation and implemented a temporary, two year fee reduction, of at least 25% on all license related fees.

The Division states that, after evaluating the success of the fee reduction, the Pest Management Division Advisory Committee proposed to extend the fee reduction an additional two years. The Divisions states that, after evaluating the projected costs and revenue over the next two years, the Department agreed with the recommendation and is proposing to extend the temporary fee reduction through June 30, 2022. This expedited rulemaking seeks to amend the expiration date of the temporary fee reduction within R3-8-103, extending it from June 30, 2020 to June 30, 2022.

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

The Division states that this amendment is eligible for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6) because it does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of any regulated person, and also amends a rule that is currently outdated and as written is not currently necessary for the operation of the Pest Management Division. Upon review, Council staff agrees with the Division that this rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6)

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

Yes. The Division cites both general and specific authority for these rules.

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

No. This rulemaking does not establish a new fee or contain a fee increase. Instead, this rulemaking seeks to extend a prior temporary fee reduction.

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

Yes. The agency received public comments in support of the proposed rulemaking and adequately responded to those comments.

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

No. The Division made no changes to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

Not applicable. There is no corresponding federal law.

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

Not applicable. These rules do not require a permit, license, or agency authorization.

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

The Division states it did not review or rely on any study in conducting this rulemaking.

9. **Conclusion**

In this expedited rulemaking, the Division seeks to amend R3-8-103 to extend the prior temporary fee reduction through June 30, 2022. The amended rules would reduce the burden on the regulated community. If approved, the rulemaking would be effective immediately upon the Division filing its Certificate of Approval with the Secretary of State's office. Council staff recommends approval of this rulemaking.

DOUGLAS A. DUCEY  
Governor



MARK W. KILLIAN  
Director

# Arizona Department of Agriculture

1688 W. Adams Street, Phoenix, Arizona 85007  
PHONE (602) 542-0990 FAX (602) 542-4290

April 8, 2020

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15th Avenue, Suite 402  
Phoenix, Arizona 85007

RE: Expedited Rulemaking A.A.C. R3-8-103

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's Notice of Final Expedited Rulemaking for A.A.C. R3-8-103. The record for this rulemaking was closed on March 13, 2020. This rulemaking is eligible for expedited status pursuant to A.R.S. § 41-1027 because it does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of any regulated person, yet does amend a rule that is currently outdated and as written is not currently necessary for the operation of the Pest Management Division. This rulemaking is in response to a request by the regulated community to continue a current fee reduction is not related to the five-year review report. There were no studies that were relevant to the rule.

Please find the following attachments:

- Notice of Final Expedited Rulemaking
- A letter of support for the rulemaking by the Arizona Pest Professional's Association
- A copy of A.R.S. § 3-3618
- A Copy of A.A.C. R3-8-103
- Request and Approval to conduct rulemaking.

Please contact Chris McCormack at (602) 542-7186 or email [cmccormack@azda.gov](mailto:cmccormack@azda.gov) or Vince Craig at 602-255-3664 with any questions about this rulemaking.

Sincerely,

Mark Killian, Director  
Arizona Department of Agriculture



or

Name: Louise Houseworth, Asst Director, Budget & Strategic Planning

Address: Arizona Department of Agriculture

1688 W. Adams Street

Phoenix, Arizona 85007

Phone: 602 542 0952

Phoenix, AZ 85007

Telephone: (602) 542-0952

Fax: (602) 542-5420

E-mail: [lhouseworth@azda.gov](mailto:lhouseworth@azda.gov)

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

In 2018, the Division has received significant feedback from its customers requesting that licensing fees be temporarily reduced. The Division agreed with this recommendation and implemented a temporary, two year fee reduction, of at least 25% on all license related fees. This reduction provided financial relief to industry members who desired to legally operate a pest control business. Because the fees collected from the industry annually exceed the operating expenses of the Division, the temporary fee reduction did not negatively impact the Division's operations.

After evaluating the success of the fee reduction, the Pest Management Division Advisory Committee proposed the idea of extending the fee reduction an additional two years. After evaluating the projected costs and revenue over the next two year, the Department agreed with the recommendation and is proposing to extend the temporary fee reduction through June 30, 2022.

This rulemaking is eligible for expedited status pursuant to A.R.S. § 41-1027 because it does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of any regulated person, yet does amend a rule that is currently outdated and as written is not currently necessary for the operation of the Pest Management Division.

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

None.

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

Not applicable.

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

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

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

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

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

The Department accepted comment on the proposed rule from February 12, 2020 until the oral proceeding, held on March 13, 2020. The Department only received positive public or stakeholder comments about the rulemaking and thanked the stakeholders for their support.

**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:**

This rule does not require a permit, it simply implements licensing fees as required by A.R.S. § 3-3618.

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

Federal laws do not apply to the rules in A.A.C. R3-8-103

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

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

**15. The full text of the rule follows:**

**R3-8-103. Fees; Charges; Exemption**

A. Beginning March 1, 2019 through June 30, ~~2020-2022~~, a person shall pay the following application and renewal fees for licensure, certification, and registration:

1. For an applicator:

- a. Applicator certification, \$55.
- b. Applicator certification broadening application, \$0.
- c. QA certification, \$75.
- d. QA certification broadening application, \$15.

2. For a qualifying party:
    - a. Registration at same time as application for or renewal of the business license, \$0.
    - b. Registration at a different time than application for or renewal of the business license, \$35.
    - c. Registration broadening, \$15.
    - d. Temporary qualifying party registration, \$75.
  3. For a business:
    - a. Business license, \$185.
    - b. Business license for federal entity, \$0.
    - c. Applicator registration, \$0 per applicator.
  4. For a branch:
    - a. Branch office registration, \$35 per branch.
    - b. Branch supervisor registration at same time as branch office registration, \$0.
    - c. Branch supervisor registration at a different time than branch office registration, \$15.
- B.** Beginning July 1, ~~2020~~ 2022, Aa person shall pay the following application and renewal fees for licensure, certification, and registration:
1. For an applicator:
    - a. Applicator certification, \$75.
    - b. Applicator certification broadening application, \$0.
    - c. QA certification, \$100.
    - d. QA certification broadening application, \$25.
  2. For a qualifying party:
    - a. Registration at same time as application for or renewal of the business license, \$0.
    - b. Registration at a different time than application for or renewal of the business license, \$50.
    - c. Registration broadening, \$25.
    - d. Temporary qualifying party registration, \$100.
  3. For a business:
    - a. Business license, \$250.
    - b. Business license for federal entity, \$0.
    - c. Applicator registration, \$0 per applicator.
  4. For a branch:
    - a. Branch office registration, \$50 per branch.
    - b. Branch supervisor registration at same time as branch office registration, \$0.
    - c. Branch supervisor registration at a different time than branch office registration, \$25.
- C.** A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.
- D.** In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when PMD allows electronic submission.
- E.** A person shall pay a late fee equal to ten percent of the renewal fee for any license, certification, or registration that is not renewed timely.
1. If a business license remains expired for more than 30 days, to renew the license, a

- person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. Late fees are in addition to the renewal fee.
2. If a certification remains expired for more than 30 days, to renew the certification, a person shall also pay an additional late fee of \$10 per month the certification remains expired, not to exceed \$110. Late fees are in addition to the renewal fee.
- F.** A business licensee shall pay the following TARF fees:
1. Electronic submissions, \$2;
  2. Electronic final grade treatment TARF submissions, \$0;
  3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
    - a. Performed the pretreatment or new-construction treatment of the main structure,
    - b. Filed a TARF regarding the pretreatment or new-construction treatment,
    - c. Has the structure under warranty, and
    - d. Treats the abutting addition under the terms of the site warranty;
  4. All paper submissions, \$8; and
  5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.
- G.** If the PMD administers a certification examination, an applicant shall pay \$50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the PMD.
- H.** PMD employees are exempt from the applicator and examination fees listed in this Section.
- I.** An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
1. The PMD shall void any approval of the application or renewal.
  2. The applicant shall pay any financial institution fee incurred by the PMD.
  3. The PMD may require the applicant to pay all fees due using a method other than a personal or business check.
  4. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- J.** The PMD may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.

## CHAPTER 8. DEPARTMENT OF OF AGRICULTURE - PEST MANAGEMENT DIVISION

“Specimen label” means a label other than the label attached to a pesticide container that contains the same information as the labeling; including an electronic label.

“Structure” means all parts of a building, whether vacant or occupied, in all stages of construction.

“Subterranean termites” means the several species of termites that usually maintain contact with the soil, including those in the families Rhinotermitidae and Termitidae.

“Supplemental wood-destroying insect inspection” means a re-examination made by an applicator of the business licensee that conducted a previous wood-destroying insect inspection and within 30 days of the previous examination to determine whether corrective treatment has been performed or conditions conducive to wood-destroying insects have been corrected.

“Tag” means a written document that is required under this Chapter to be posted conspicuously at a pretreatment or new-construction treatment site.

“TARF” means termite action report form.

“Termiticide” means a chemical registered by the EPA and the Department and used for control of termites.

“Water-retention basin” means an area to temporarily hold water run-off until the water dissipates.

“WDIIR” means wood-destroying insect inspection report.

“Wood-destroying insect inspection” means an inspection for the presence or absence of wood-destroying insects.

**Historical Note**

New Section recodified from R4-29-101 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-102. Certification Categories; Scope**

The name and scope of each certification category are as follows:

1. Industrial and institutional: pest management in, on, around or adjacent to a structure not covered by another category; pest management in or on asphalt, concrete, gravel, rocks and similar surfaces, including man holes, not covered by another certification category; pest management of health related pests wherever found; but excluding anti-microbial pest management and fungi inspection
2. Wood-destroying organism management.
  - a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and treating for wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.
  - b. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.
3. Ornamental and turf: pest management, including weeds, pests in trees, shrubs, and flowers, turf and bare ground, not covered by the right-of-way category, by means other than the use of a fumigant. Excludes any pests within a structure.
4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas by a means other than use of a fumigant, but excluding pest management in the maintenance of ornamental trees, shrubs and flowers.

5. Aquatic: pest management, including weeds, in standing or running water.
6. Fumigation: pest management using fumigants; except as provided in the wood preservation category.
7. Wood preservation: application of pesticides, including fumigants labeled for use on utility poles or railroad ties, directly to structural components of wood or wood products, to prevent or manage wood degradation by wood-destroying organisms including fungi and bacteria, which are not part of an existing structure.

**Historical Note**

New Section recodified from R4-29-102 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-103. Fees; Charges; Exemption**

- A. Beginning March 1, 2019 through June 30, 2020, a person shall pay the following application and renewal fees for licensure, certification, and registration:
  1. For an applicator:
    - a. Applicator certification, \$55.
    - b. Applicator certification broadening application, \$0.
    - c. QA certification, \$75.
    - d. QA certification broadening application, \$15.
  2. For a qualifying party:
    - a. Registration at same time as application for or renewal of the business license, \$0.
    - b. Registration at a different time than application for or renewal of the business license, \$35.
    - c. Registration broadening, \$15.
    - d. Temporary qualifying party registration, \$75.
  3. For a business:
    - a. Business license, \$185.
    - b. Business license for federal entity, \$0.
    - c. Applicator registration, \$0 per applicator.
  4. For a branch:
    - a. Branch office registration, \$35 per branch.
    - b. Branch supervisor registration at same time as branch office registration, \$0.
    - c. Branch supervisor registration at a different time than branch office registration, \$15.
- B. Beginning July 1, 2020, a person shall pay the following application and renewal fees for licensure, certification, and registration:
  1. For an applicator:
    - a. Applicator certification, \$75.
    - b. Applicator certification broadening application, \$0.
    - c. QA certification, \$100.
    - d. QA certification broadening application, \$25.
  2. For a qualifying party:
    - a. Registration at same time as application for or renewal of the business license, \$0.
    - b. Registration at a different time than application for or renewal of the business license, \$50.
    - c. Registration broadening, \$25.
    - d. Temporary qualifying party registration, \$100.
  3. For a business:
    - a. Business license, \$250.
    - b. Business license for federal entity, \$0.
    - c. Applicator registration, \$0 per applicator.
  4. For a branch:
    - a. Branch office registration, \$50 per branch.
    - b. Branch supervisor registration at same time as branch office registration, \$0.

## CHAPTER 8. DEPARTMENT OF OF AGRICULTURE - PEST MANAGEMENT DIVISION

- c. Branch supervisor registration at a different time than branch office registration, \$25.
- C. A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.
- D. In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when PMD allows electronic submission.
- E. A person shall pay a late fee equal to ten percent of the renewal fee for any license, certification, or registration that is not renewed timely.
1. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. Late fees are in addition to the renewal fee.
  2. If a certification remains expired for more than 30 days, to renew the certification, a person shall also pay an additional late fee of \$10 per month the certification remains expired, not to exceed \$110. Late fees are in addition to the renewal fee.
- F. A business licensee shall pay the following TARF fees:
1. Electronic submissions, \$2;
  2. Electronic final grade treatment TARF submissions, \$0;
  3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
    - a. Performed the pretreatment or new-construction treatment of the main structure,
    - b. Filed a TARF regarding the pretreatment or new-construction treatment,
    - c. Has the structure under warranty, and
    - d. Treats the abutting addition under the terms of the site warranty;
  4. All paper submissions, \$8; and
  5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.
- G. If the PMD administers a certification examination, an applicant shall pay \$50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the PMD.
- H. PMD employees are exempt from the applicator and examination fees listed in this Section.
- I. An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
1. The PMD shall void any approval of the application or renewal.
  2. The applicant shall pay any financial institution fee incurred by the PMD.
  3. The PMD may require the applicant to pay all fees due using a method other than a personal or business check.
  4. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- J. The PMD may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- Historical Note**
- New Section recodified from R4-29-103 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2). Section amended by final expedited rulemaking at 25 A.A.R. 720, effective February 25, 2019 (Supp. 19-1).
- R3-8-104. Pest Management Division Council**
- A. A five-member Pest Management Division Council is established to assist and make recommendations to the director regarding the administration and implementation of A.R.S. Title 3, Chapter 20.
- B. The members shall meet the following qualifications:
1. Three members shall be business licensees or qualifying parties and shall each have a minimum of five years of pest management experience.
    - a. At least one of these three members shall be a business licensee who has five or fewer applicators.
    - b. For one of these three members, first priority shall be given to a business licensee or QP based outside of Maricopa and Pima Counties and secondary priority shall be given to a business licensee or QP who is not based outside of those counties but is associated with a business that has an office in Arizona outside of those counties. If there are no qualified first or secondary priority applicants, the Director may appoint any business licensee or QP with a minimum of five years of pest management experience.
  2. One member shall be a representative of a political subdivision.
  3. One member shall be a public member who does not provide pest management services or work for a business licensee.
- C. Members shall serve three year staggered terms. Members shall not serve consecutive terms, except that a member who is appointed to fill a vacancy may serve the unexpired term that fills the vacancy plus one regular term. A member shall be ineligible for reappointment for three years.
- D. The office of a member shall be deemed vacant under any of the following circumstances:
1. The member no longer satisfies the qualification in subsection (B).
  2. The member is unable to perform the duties of the office.
  3. The absence of the member from three consecutive Committee meetings if the absences have not been excused by the Committee.
- E. The Committee shall annually select a chairman and vice-chairman from among its members.
- Historical Note**
- New Section recodified from R4-29-104 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).
- R3-8-105. Reserved**
- Historical Note**
- New reserved Section recodified from R4-29-105 at 23

### 3-3618. Fees

A. The director shall establish by rule and collect application and renewal fees for the following:

1. A business license.
2. A branch office registration.
3. A branch supervisor registration.
4. A qualifying party registration.
5. A temporary qualifying party registration.
6. A temporary qualifying party renewal registration.
7. An applicator certification.
8. A qualified applicator certification.
9. An applicator registration.
10. A duplicate license.

B. The director may charge and collect late fees in addition to the fees listed in subsection A of this section.

C. The director may establish tiered fees for business licenses.

D. The director may charge and collect additional fees for goods and services that the director considers to be appropriate to carry out the intent and purpose of this chapter. These additional fees shall not exceed the costs of providing the goods or rendering the services.

**STATE LAND DEPARTMENT**

Title 12, Chapter 5, Article 23, Board of Appeals



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

---

**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT:** Arizona State Land Department  
Title 12, Chapter 5, Article 23

---

This Five-Year-Review Report (5YRR) from the State Land Department relates to rules in Title 12, Chapter 4, Article 23, regarding the Board of Appeals.

In the last 5YRR the Department did not propose to make any changes to the rules.

### **Proposed Action**

The Department is not proposing any changes to the rules.

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

Yes, the Department cites to both general and specific statutory authority.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The State Land Department oversees millions of acres of State Trust Land and associated natural resources. The Department has determined that the economic impact does not differ from what was determined in the previous review of the rules.

The stakeholders include: the Department, state land applicants, the Board of Appeals, current users of state land, 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 benefits to stakeholders outweighs the minimal administrative cost associated with the appeals process. The Department plans to retain the rules as written.

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

No, the Department indicates it did not receive any written criticisms on these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Department indicates the rules are clear, concise, understandable, effective, and consistent with other rules and statutes.

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

Yes, the Department indicates the rules are enforced as written.

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

Not applicable. There are no corresponding federal laws.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

9. **Conclusion**

As mentioned above, the Department is not proposing any changes to the rules. The rules are overall clear, concise, and understandable. Council staff recommends approval of this report.

Douglas A. Ducey  
Governor



Lisa A. Atkins  
Commissioner

## Arizona State Land Department

1616 West Adams, Phoenix, Arizona 85007  
(602) 542-4631

February 27, 2020

Arizona Department of Administration  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 402  
Phoenix, AZ 85007

Attn: Nicole Sornsins, Chairperson

RE: Arizona State Land Department's 5 Year Rule Review Report on A.A.C. Title 12, Chapter 5, Article 23

Dear Chairperson Sornsins:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Article 23. This document complies with the requirements under A.R.S. § 41-1056. The Department is not in compliance with A.R.S. § 41-1091 but is working diligently to become compliant.

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or [acalabresi@azland.gov](mailto:acalabresi@azland.gov).

Sincerely,

Lisa A. Atkins  
State Land Commissioner

Enclosures

# FIVE-YEAR RULE REVIEW REPORT

Submitted to

**THE GOVERNOR’S REGULATORY REVIEW COUNCIL**



**ARIZONA STATE LAND DEPARTMENT**

*"Serving Arizona's Schools and Public Institutions Since 1915"*

**TITLE 12 – Natural Resources  
CHAPTER 5 – State Land Department**

**Article – 23 Board of Appeals**

*Due February 29, 2020*

# **FIVE YEAR RULE REVIEW REPORT**

## **TITLE 12. NATURAL RESOURCES CHAPTER 5. STATE LAND DEPARTMENT**

### **Article – 23 Board of Appeals**

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## **FIVE-YEAR REVIEW REPORT FOR ARTICLES**

### **Summary**

The Administrative Procedures Act (APA) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor's Regulatory Review Council (the "Council") for review. The Arizona State Land Department (the "Department") is scheduled to file a review of its rules under Title 12, Chapter 5, Article 23 with the Council by the end of February 2020. The Department's complete rules are located in the Arizona Administrative Code ("A.A.C.") Title 12, Chapter 5, Articles 1 through 25 and can be found on the Department's website ([www.azland.gov](http://www.azland.gov)) as well as the Arizona Secretary of State's website ([www.azsos.gov](http://www.azsos.gov)).

The Department is not a regulatory agency. It functions as the trustee of the State's 9.2 million acres of Trust land and associated natural resources. The trust status of the lands granted to the State imposes obligations and constraints that would not apply if the State held the land outright. The Department's management of the Trust is governed by extensive and detailed provisions in Sections 24-30 of the State's Enabling Act, the Arizona Constitution (Article X), and statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate). In addition, extensive case law governs the Department's procedures and management of the Trust.

Article 23 describes the appeals and hearing process followed by the Board of Appeals. A.R.S. § 37-213 through § 37-215 establishes the Board of Appeals ("BOA"), outlines BOA responsibilities, and requires all land sales, commercial leases, and participation contracts to be approved by the BOA. The BOA also hears appeals of Commissioner decisions relating to appraisals and land classifications.

The five members of the BOA are selected by the Governor and confirmed by the Senate. BOA members serve six-year terms. Three members represent the state's fifteen counties, divided into three districts. Two members serve at-large. The BOA meets monthly, mostly, but may meet more or less often when circumstances dictate.

Two rules in Article 23 were originally adopted in 1983 (R12-5-2301 and R12-5-2315) and the remaining the thirteen rules were adopted in 1995. All were amended in 2008.

Under this Five-Year Rule Review, the Department evaluated fifteen separate rules within Articles 23. The Department plans to retain the rules as written.

## **FACTORS ANALYZED AND IDENTICAL INFORMATION**

### **Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A):**

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S 40-1037; and
14. Course of action the agency proposes to take regarding each rule.

### **Identical Information for All the Rules**

Pursuant to A.A.C. R1-6-301(B), identical information shall be provided only once for any group of rules for which information on a particular issue is the same. The rules contained in this report are identical in the following ways:

3. The rules are effective.
4. The rules are consistent with statute and other rules made by the Agency, as well as agency operations.
5. The rules are enforced.
6. The rules subject to review in this report are clear, concise and understandable.
7. No written criticisms of the rules have been received by the Department during the past five years.

8. In 2008, it was predicted that the proposed amendments to the rules would have minimum economic impact because the rules did not impose any fees or regulations and the amendments were non-substantive. There have been no additional economic impacts since the amendments were made in 2008.
9. No analysis has been received by the Department pertaining to the rules' impacts on the State's business competitiveness.
10. In the previous five-year review report in 2015, the Department proposed to retain the rules and not make any changes.
11. The Department believes the rules' probable benefits outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule while meeting their underlying objectives.
12. There are no corresponding federal laws applicable to Article 23.
13. This factor does not apply because the rules reviewed herein were not adopted after July 29, 2010.
14. The Department plans to retain the rules as written.

## RULE ANALYSIS

### Article 23 Board of Appeals

#### A.A.C. Rule 12-5-2301 Definitions

1. **Statutory Authority:**  
A.R.S. § 37-213(E)
2. **Objective:**  
The rule defines terms used throughout this Article.

#### A.A.C. Rule 12-5-2302 Notice of Appeal

1. **Statutory Authority:**  
A.R.S. § 37-213(E)
2. **Objective:**  
The rule explains the process and criteria for filing an appeal under this Article.

#### A.A.C. Rule 12-5-2303 Notice of Hearing

1. **Statutory Authority:**  
A.R.S. § 37-213(E)
2. **Objective:**  
The rule describes the timeframe for setting a hearing date, service of a notice of a hearing, and the contents for the notice of the hearing.

#### A.A.C. Rule 12-5-2304 Prehearing Disclosure

1. **Statutory Authority:**  
A.R.S. § 37-213(E)
2. **Objective:**  
The rule establishes requirements for witnesses, exhibits, and testimony to be used in hearings.

**A.A.C. Rule 12-5-2305 Continuances**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule outlines the criteria for and process of hearing continuances.

**A.A.C. Rule 12-5-2306 Computation of Time; Additional Time After Service by Mail**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule explains how timeframes are computed as they relate to filing and service of process deadlines.

**A.A.C. Rule 12-5-2307 Service of Documents Other than Subpoenas**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule outlines the requirements and determination of service of process of documents other than subpoenas.

**A.A.C. Rule 12-5-2308 Subpoenas**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule outlines the requirements for a subpoena and the determination of service of process of subpoenas, as well as objections thereto.

**A.A.C. Rule 12-5-2309 Motions**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule outlines the procedures and deadline for filing motions, as well as the party responsible for ruling on certain types of motions.

**A.A.C. Rule 12-5-2310 Hearing**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule explains the requirements to record and conduct a hearing.

**A.A.C. Rule 12-5-2311 Evidence**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule outlines the evidentiary process of the hearing.

**A.A.C. Rule 12-5-2312 Objection to Decision by Chairperson**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule describes the process for a Board member to object to a decision made by the Chairperson.

**A.A.C. Rule 12-5-2313 Ex Parte Communications**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rules prohibits certain ex parte communication with Board members and the consequences thereof.

**A.A.C. Rule 12-5-2314 Decision of the Board**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule outlines the time and content requirements of final Board decisions.

## **A.A.C. Rule 12-5-2315 Rehearing or Review of Decision**

**1. Statutory Authority:**

A.R.S. § 37-213(E)

**2. Objective:**

The rule outlines procedures, grounds, and time limits that apply to a motion for a rehearing or review of a decision of the Board.

### **Economic Impact Statement**

There is no estimated economic impact associated with the rules in Article 23 reviewed herein. Between FY2015 and FY2019, there were three appeals filed with the Board. Of those three, zero were heard by the Board, as two were withdrawn by the applicants and the third was sent to the Office of Administrative Hearings. In that same timeframe, zero requests for rehearing were made.

**APPENDIX A**  
Arizona Administrative Code Rules Reviewed

Title 12, Chapter 5, Article 23. Board of Appeals

- R12-5-2301. Definitions
- R12-5-2302. Notice of Appeal
- R12-5-2303. Notice of Hearing
- R12-5-2304. Prehearing Disclosure
- R12-5-2305. Continuances
- R12-5-2306. Computation of Time; Additional Time After Service by Mail
- R12-5-2307. Service of Documents Other than Subpoenas
- R12-5-2308. Subpoenas
- R12-5-2309. Motions
- R12-5-2310. Hearing
- R12-5-2311. Evidence
- R12-5-2312. Objection to decision by Chairperson
- R12-5-2313. Ex Parte Communications
- R12-5-2314. Decision of the Board
- R12-5-2315. Rehearing or review of decision

[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department Article 23. Board of Appeals](#)

A.A.C. T. 12, Ch. 5, Art. 23, Refs & Annos  
[Currentness](#)

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[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2301

R12-5-2301. Definitions

Currentness

Unless the context requires otherwise, in this Article:

1. “Appellant” means the person that files a notice of appeal with the Clerk under [A.R.S. § 37-215](#).
2. “Board” means the Land Department Board of Appeals appointed by the Governor under [A.R.S. § 37-213\(A\)](#).
3. “Chairperson” means the Chairperson or, in the Chairperson's absence or by designation, the Vice-chairperson of the Board.
4. “Clerk” means the person designated by the Board to handle administrative matters for the Board.
5. “Commissioner” means the State Land Commissioner appointed under [A.R.S. § 37-131](#), or the Commissioner's designee.
6. “Department” means the State Land Department.
7. “Good cause” means a reason that the Board determines is substantial enough to afford a legal excuse.
8. “Party” has the same meaning as prescribed in [A.R.S. § 41-1001](#).
9. “Person” means an individual, limited liability company, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, group acting as a unit, and any department, agency, or instrumentality of the state or a political subdivision.

**Credits**

Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Former Section R12-5-2301 renumbered to R12-5-2315, new Section R12-5-2301 adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2301, AZ ADC R12-5-2301

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[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2302

R12-5-2302. Notice of Appeal

Currentness

**A.** A person that files a notice of appeal under [A.R.S. § 37-215](#) shall ensure that the notice is written and contains a clear and concise statement of the grounds for appeal and the specific relief requested.

**B.** If a notice of appeal regards a final decision of the Commissioner relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Commissioner under this Article.

**C.** If a notice of appeal regards a final decision of the Commissioner not relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Department under A.R.S. Title 41, Chapter 6, Article 10.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2302, AZ ADC R12-5-2302

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[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2303

R12-5-2303. Notice of Hearing

Currentness

**A.** Setting a hearing date. Within 10 days after receipt of a notice of appeal under [A.R.S. § 37-215](#) and R12-5-2302(B), the Clerk shall set a date for the hearing.

**B.** Service of a notice of hearing. At least 30 days before a hearing, the Clerk shall serve notice of the hearing, by certified mail or personal service, to the appellant, Department, and all other parties to the appeal.

**C.** Contents of a notice of hearing. The Clerk shall ensure that a notice of hearing contains a statement:

1. Identifying the Board, parties, and matters asserted;
2. Establishing the date, time, and place of the hearing;
3. Identifying the legal authority and jurisdiction under which the hearing is to be held;
4. Advising the parties of the requirements of R12-5-2305; and
5. Referencing the particular statutes and rules involved.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 88, effective February 17, 2003 (Supp. 02-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 48, November 29, 2019.

A.A.C. R12-5-2303, AZ ADC R12-5-2303

[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2304

R12-5-2304. Prehearing Disclosure

Currentness

**A.** Witnesses and exhibits. At least 15 days before the hearing date, each party shall:

1. File with the Clerk:

a. A list of all witnesses who may be called to testify on behalf of the party, and

b. Eight copies of all documentary exhibits to be offered on behalf of the party; and

2. Serve upon each other party a copy of the list of witnesses and a list of all exhibits to be offered on behalf of the party.

**B.** The Board shall exclude the testimony of a witness and the admission of an exhibit not disclosed under subsection (A), unless the Board determines that admission of the evidence is in the interest of fairness and justice.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 48, November 29, 2019.

A.A.C. R12-5-2304, AZ ADC R12-5-2304

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[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2305

R12-5-2305. Continuances

Currentness

**A. General.** The Chairperson may, for good cause, continue or reschedule a hearing on the Chairperson's own motion, application of a party, or stipulation of the parties.

**B. Application for continuance.**

1. Filing. To obtain a continuance of a hearing, a party shall file an application for continuance with the Clerk and serve a copy of the application on all parties no later than 10 days before the scheduled hearing. For good cause, the Chairperson may allow a party to file and serve an application for continuance less than 10 days before the scheduled hearing.

2. Contents. A party filing an application for continuance shall ensure that the application states why the continuance is requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.

3. Response and reply. An opposing party may file and serve a response within five days after service of an application for continuance. The Board shall permit a reply that is filed and served within five days after the response is served.

**C. Stipulations.** The parties may stipulate to a continuance. The Board shall accept a stipulation that is filed no later than 72 hours before the time scheduled for the hearing.

**D. Time limits.** Unless the parties agree, the Board shall not grant a continuance if granting the continuance causes the hearing not to be conducted in compliance with [A.R.S. § 37-215\(C\)](#).

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Typographical correction made to A.R.S. reference in R12-5-2305(E) (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 48, November 29, 2019.

A.A.C. R12-5-2305, AZ ADC R12-5-2305

[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2306

R12-5-2306. Computation of Time; Additional Time After Service by Mail

[Currentness](#)

**A. Computation.** To compute any period prescribed or allowed by this Article or order of the Board, the day of the act, event, or default after which the period begins to run is not included. The last day of the period is included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.

**B. Service by mail.** If a party has a right or is required to do some act or proceed within a prescribed period after service of a notice or other paper and if the notice or paper is served by mail, five calendar days are added to the prescribed period.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2306, AZ ADC R12-5-2306

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[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2307

R12-5-2307. Service of Documents Other than Subpoenas

[Currentness](#)

**A. Method of service.** Unless otherwise specified in this Article, a person shall serve a document other than a subpoena by:

1. Personal service with receipt or certificate of delivery,
2. Legible fax with confirmed receipt, or
3. Regular mail.

**B. Service on attorney.** If a party has appeared through an attorney, service upon the attorney is deemed service upon the party.

**C. Time of service.** Service is made at the time a document is:

1. Personally served;
2. Faxed to the number contained in Board's records for the person being served; or
3. Deposited in the United States mail, postage prepaid, in a sealed envelope addressed to the person being served, at the person's address of record.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 48, November 29, 2019.

A.A.C. R12-5-2307, AZ ADC R12-5-2307

[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2308

R12-5-2308. Subpoenas

Currentness

**A.** Issuance of a subpoena. Upon written application of a party or on the Chairperson's own motion, the Chairperson may issue a subpoena requiring the attendance and testimony of a witness, production of documentary or other tangible evidence, or both.

**B.** Specificity required. A party that applies for a subpoena to compel production of documentary or other tangible evidence shall ensure that the application specifically identifies the books, papers, documents, or other evidence to be produced.

**C.** Service of a subpoena. A party that applies for a subpoena shall ensure that the subpoena is personally served. The person serving a subpoena shall provide proof of service by filing with the Board a certified statement of the date and manner of service and the name of the person served.

**D.** Objection to a subpoena. A party or the person served with a subpoena who objects to the subpoena, or a portion of the subpoena, may file a written objection with the Board. The person filing an objection shall:

1. File it within five days after service of the subpoena or at the beginning of the hearing, whichever occurs first; and
2. Ensure that the objection states why the subpoena is unreasonable or oppressive or how the desired testimony or evidence may be obtained by an alternative method.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 48, November 29, 2019.

A.A.C. R12-5-2308, AZ ADC R12-5-2308

[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2309

R12-5-2309. Motions

Currentness

**A.** Generally. A party that requests an order or other relief from the Board shall file a motion. Unless made during a hearing, a motion shall be made in writing at least 10 days before the hearing. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion and the relief or order sought.

**B.** Response to motion; reply. A party may file a response to a pre-hearing motion within five days after service of the prehearing motion. The responding party shall serve the response on the moving party. The moving party may file a reply within five days after service of the response.

**C.** Affidavits. If a party makes a motion that relies on facts that are neither apparent in the record nor subject to official notice, the party shall support the motion by affidavit or other satisfactory evidence.

**D.** Rulings on motions. The Board shall consider a pre-hearing motion on the written materials submitted by the parties, unless the Chairperson directs otherwise. The Chairperson may rule on a procedural motion. The Board shall rule on a non-procedural motion.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 48, November 29, 2019.

A.A.C. R12-5-2309, AZ ADC R12-5-2309

[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2310

R12-5-2310. Hearing

Currentness

**A.** Recording of hearing. The Board shall ensure that a hearing record is made by tape recorder or stenographer.

**B.** Order of appearance. The Chairperson shall designate the order in which parties introduce their evidence.

**C.** Improper conduct. It is improper conduct to fail to comply with an order of the Chairperson or to disrupt a hearing. A person who engages in improper conduct shall be excluded from the hearing if the Chairperson determines that exclusion is necessary to facilitate the hearing.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2310, AZ ADC R12-5-2310

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A.A.C. R12-5-2311

R12-5-2311. Evidence

Currentness

**A.** Generally. A witness at a hearing shall testify under oath or affirmation. To encourage a full and true disclosure of the facts, the Chairperson shall ensure that all parties have the right to present oral or documentary evidence and conduct cross-examination. The Chairperson shall admit evidence that the Chairperson determines is relevant, probative, and material and rule upon offers of proof. The Chairperson shall exclude evidence the Chairperson determines is irrelevant, immaterial, or unduly repetitious.

**B.** Evidence. The Chairperson may conduct a hearing in an informal manner without adherence to the rules of evidence required in judicial proceedings.

**C.** Official notice. The Board may take official notice of any matter than might be judicially noticed by a superior court of Arizona or any matter that is peculiarly within the knowledge of the Board as an expert body.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2311, AZ ADC R12-5-2311

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A.A.C. R12-5-2312

R12-5-2312. Objection to Decision by Chairperson

[Currentness](#)

If any member of the Board objects to a decision made by the Chairperson under this Article, the Board member may request that the Board vote on the matter in question and the Chairperson shall submit the matter to a vote of the Board.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2312, AZ ADC R12-5-2312

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[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2313

R12-5-2313. Ex Parte Communications

Currentness

**A. Prohibitions.** A party shall not communicate, directly or indirectly, orally or in writing, with a member of the Board about any substantive issue relating to a proceeding before the Board unless:

1. All parties are present, either personally or by an attorney;
2. It is during a scheduled proceeding where an absent party fails to appear after proper notice; or
3. It is by written motion with a copy to all parties.

**B. Record.** A Board member who receives an ex parte communication shall place in the public record of the proceeding:

1. A copy of the ex parte communication if the communication is written; or
2. A summary of the substance of the ex parte communication if the communication is oral.

**C. Action by Board.** Upon receipt of an ex parte communication by a member of the Board, the Board, to the extent consistent with the interests of justice, may require the party making the ex parte communication to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by the violation.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2313, AZ ADC R12-5-2313

[Arizona Administrative Code Title 12. Natural Resources Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 23. Board of Appeals \(Refs & Annos\)](#)

A.A.C. R12-5-2314

R12-5-2314. Decision of the Board

Currentness

**A.** Time limit. Unless the parties stipulate otherwise, the Board shall render its final decision within 60 days after the hearing.

**B.** Contents. The Board shall include findings of facts and conclusions of law, separately stated, in the Board's decision.

**Credits**

Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

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A.A.C. R12-5-2314, AZ ADC R12-5-2314

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A.A.C. R12-5-2315

R12-5-2315. Rehearing or Review of Decision

Currentness

**A.** Generally. Except as provided in subsection (G), within 30 days after service of notice of a final decision issued by the Board, a party may file with the Board a written motion for rehearing or review of the decision. A party is not required to file a motion for rehearing or review of a decision to exhaust the party's administrative remedies. A party may seek judicial review of the Board's final decision under A.R.S. Title 12, Chapter 7, Article 6.

**B.** Amendment of motion; response; oral argument. A party may amend a motion for rehearing or review at any time before the Board rules on the motion. Another party may file a response to a motion for rehearing or review within 10 days after service of the motion or amended motion. A party shall ensure that a motion or response is supported by a memorandum discussing legal and factual issues. Oral argument may be requested by either party or the Board.

**C.** Grounds for rehearing or review. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; or
6. The findings of fact or decision is not justified by the evidence or is contrary to law.

**D.** Affirmation or modification of decision; grant of rehearing or review. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (C). The Board shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

**E. Board-initiated rehearing or review.** Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of the decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in a motion. The Board shall specify with particularity the grounds on which a rehearing or review is granted under this subsection.

**F. Affidavits.** When a party bases a motion for rehearing or review upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Chairperson for a maximum 10 days for good cause or by written stipulation of the parties. The Board may permit a party to file a reply affidavit.

**G. Exigency.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.

**H. Time limits.** The Board shall rule on a motion for review or rehearing within 90 days after it is filed. If the Board grants a rehearing or review, the Board shall conduct the rehearing or review within 90 days after issuing the order granting the rehearing or review.

#### **Credits**

Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Section R12-5-2315 renumbered from R12-5-2301 and amended effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

Current through rules published in Arizona Administrative Register Volume 25, Issue 48, November 29, 2019.

A.A.C. R12-5-2315, AZ ADC R12-5-2315

**APPENDIX B**  
Related Statutes

Statutory Authority:

A.R.S. § 37-132 Powers and duties

A.R.S. § 37-213 Board of Appeals

Related Statutes:

A.R.S. § 37-214 Board of Appeals; approval of participation contracts

A.R.S. § 37-215 Appeal from decision of commissioner or board of appeals

[Arizona Revised Statutes Annotated](#)  
[Title 37. Public Lands \(Refs & Annos\)](#)  
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)  
[Article 2. State Land Commissioner](#)

A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 29, 2012

[Currentness](#)

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to [§ 37-202](#).
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10<sup>1</sup> and, except as provided in [§ 41-1092.08, subsection H](#), are subject to judicial review pursuant to title 12, chapter 7, article 6.<sup>2</sup>
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.
8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4<sup>3</sup> and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to [§ 38-611](#).

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

**B.** The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under [§ 37-107, subsection B](#), paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20<sup>4</sup> and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to [§ 37-107](#).

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to [§ 9-461.06](#) or [11-805](#).

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to [§ 37-312](#).

(ii) Sold or leased at auction for conservation purposes.

**C.** The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

#### **Credits**

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; [Laws 1989, Ch. 171, § 1](#); [Laws 1992, Ch. 190, § 1](#); [Laws 1992, Ch. 357, § 1](#); [Laws 1993, Ch. 169, § 3, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 3](#); [Laws 1997, Ch. 221, § 167](#); [Laws 1997, Ch. 249, § 1](#); [Laws 1999, Ch. 209, § 1](#); [Laws 2000, Ch. 10, § 1](#); [Laws 2000, Ch. 113, § 158](#); [Laws 2002, Ch. 336, § 2](#); [Laws 2003, Ch. 69, § 2](#); [Laws 2010, Ch. 243, § 6](#); [Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011](#); [Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011](#); [Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012](#).

[Notes of Decisions \(40\)](#)

Footnotes

[1](#) Section 41-1092 et seq.

[2](#) Section 12-901 et seq.

[3](#) Section 41-741 et seq.

[4](#) Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

Current through legislation effective February 3, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

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[Arizona Revised Statutes Annotated](#)  
[Title 37. Public Lands \(Refs & Annos\)](#)  
[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)  
[Article 2. Investigation, Classification and Appraisal \(Refs & Annos\)](#)

A.R.S. § 37-213

§ 37-213. Board of appeals

[Currentness](#)

**A.** There is established a board of appeals consisting of five members appointed by the governor pursuant to [§ 38-211](#). No more than three members shall be appointed from the same political party. Members shall be appointed as follows:

1. One member from each of three districts into which the state is divided as follows:

(a) First district: Pima, Santa Cruz, Cochise, Graham and Greenlee counties.

(b) Second district: Maricopa, Yuma, La Paz, Pinal and Gila counties.

(c) Third district: Mohave, Yavapai, Coconino, Apache and Navajo counties.

2. The remaining two members of the board of appeals shall be appointed at large by the governor.

**B.** To be eligible for appointment as a member of the board a person shall be experienced in the classification and appraisal of all types of real estate.

**C.** The term of office of each member is six years, ending on the third Monday in January of the sixth year after his appointment. Appointments to fill vacancies resulting other than from expiration of term shall be for the unexpired portion of the term only.

**D.** Each member of the board is eligible to receive compensation as determined pursuant to [§ 38-611](#).

**E.** The board may adopt administrative rules necessary to perform its duties prescribed by law.

**Credits**

Amended by Laws 1970, Ch. 204, § 143; Laws 1972, Ch. 163, § 38; Laws 1981, 1st S.S., Ch. 1, § 9; Laws 1983, Ch. 291, § 11, eff. April 27, 1983; Laws 1984, Ch. 228, § 1.

A. R. S. § 37-213, AZ ST § 37-213

Current through legislation effective February 3, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

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[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 2. Investigation, Classification and Appraisal \(Refs & Annos\)](#)

A.R.S. § 37-214

§ 37-214. Board of appeals; approval of participation contracts; appeal

[Currentness](#)

**A.** Before approving a participation contract, the board of appeals shall review the report submitted by the commissioner pursuant to [§ 37-239](#). A majority vote of a quorum of the board is required for the adoption of the report. Upon the adoption of the report the proposed participation contract may be approved. The board shall act within one hundred twenty days after receiving the report.

**B.** Land classified as suitable for commercial or homesite purposes after completing the planning process pursuant to article 5.1 of this chapter<sup>1</sup> shall not be leased for a term greater than ten years unless the board determines that such lease will result in obtaining a higher benefit to the trust than would result if the land were sold. In making this determination, the board shall consider the sales price, the investment earnings potential, the property tax revenues obtainable once the land has been sold, the role of trust earnings in the financing of the activities of the beneficiaries, the potential earnings available through the lease or exchange of the lands in question, the potential long-term appreciation of the land and all other factors deemed relevant by the board.

**C.** A final decision of the board may be appealed by the commissioner or by any person adversely affected by the decision pursuant to title 41, chapter 6, article 10.<sup>2</sup>

**Credits**

Added by Laws 1981, 1st S.S., Ch. 1, § 11. Amended by [Laws 1988, Ch. 336, § 1](#); [Laws 1990, Ch. 24, § 2](#); [Laws 1993, Ch. 168, § 1, eff. April 20, 1993](#); [Laws 1996, Ch. 133, § 3](#); [Laws 1997, Ch. 221, § 170](#); [Laws 1998, Ch. 52, § 13](#); [Laws 1999, Ch. 209, § 2](#).

[Notes of Decisions \(15\)](#)

Footnotes

<sup>1</sup> Section 37-331 et seq.

<sup>2</sup> Section 41-1092 et seq.

A. R. S. § 37-214, AZ ST § 37-214

Current through legislation effective February 3, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

[Arizona Revised Statutes Annotated](#)

[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 2. Investigation, Classification and Appraisal \(Refs & Annos\)](#)

A.R.S. § 37-215

§ 37-215. Appeal from decision of commissioner or board of appeals

[Currentness](#)

**A.** An appeal from a final decision of the state land commissioner relating to classification or appraisal of lands or improvements may be taken to the board of appeals by any person adversely affected by the decision. Appeals shall be taken by giving notice in writing to the commissioner within thirty days from the date notice of the decision is mailed to the last known post office address of the appellant by the commissioner.

**B.** As a condition for filing an appeal of an order regarding an appraisal conducted under [§ 37-285](#) or a reappraisal required by the terms of a lease, the appellant, with the notice of appeal, shall pay to the department all amounts of the billed rental during the pendency of the appeal. The disputed amount shall be held by the state treasurer in an impound fund to be invested subject to the final disposition of the appeal, and the undisputed amount shall be credited to the appropriate trust. If the appellant fails to pay any amount before the deadline for filing notice of the appeal and fails to provide proof of payment of the amount with the notice of appeal, any notice of appeal to the board of appeals or to superior court shall not be accepted for filing and the decision of the commissioner is final. If billed rental becomes due during the pendency of an appeal and is not paid on or before the due date, the appeal shall be dismissed and the decision of the commissioner is final. If the commissioner's decision is upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be paid to the appropriate trust. If the commissioner's decision is not upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be credited first to the accrued rent determined to be due and the remainder shall be paid to the appellant.

**C.** The board of appeals, within one hundred twenty days from the date of the notice of appeal, shall conduct a hearing in the county in which the major portion of the land involved in the appeal is located, unless otherwise stipulated by the parties to the appeal. The board shall render its decision upon the hearing within sixty days from the date of the hearing unless the parties to the appeal otherwise stipulate. The board shall make its findings and decision in writing and shall furnish a copy to all parties to the appeal. A majority of a quorum of the board may render the decision.

**D.** All records of the board of appeals shall be kept in the offices of the state land department. The department shall provide clerical assistants to the board as necessary to perform its duties.

**E.** Except as provided in [§ 41-1092.08, subsection H](#), the commissioner or any person adversely affected by a final decision of the board of appeals may seek judicial review pursuant to title 12, chapter 7, article 6. <sup>1</sup>

**F.** Any person adversely affected by a final decision of the commissioner not relating to the classification or appraisal of lands or improvements is entitled to a hearing pursuant to title 41, chapter 6, article 10. <sup>2</sup>

G. If no appeal is taken, the decision of the commissioner or the board of appeals, as the case may be, is final and conclusive.

**Credits**

Enacted as § 37-214. Amended by Laws 1960, Ch. 73, § 1; Laws 1980, Ch. 231, § 71. Renumbered as § 37-215 by Laws 1981, 1st S.S., Ch. 1, § 10. Amended by [Laws 1989, Ch. 127, § 2](#); [Laws 1993, Ch. 168, § 2, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 4](#); [Laws 1995, Ch. 5, § 1](#); [Laws 1997, Ch. 221, § 171](#); [Laws 2000, Ch. 113, § 159](#).

[Notes of Decisions \(5\)](#)

Footnotes

[1](#) Section 12-901 et seq.

[2](#) Section 41-1092 et seq.

A. R. S. § 37-215, AZ ST § 37-215

Current through legislation effective February 3, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

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**STATE LAND DEPARTMENT**  
Title 12, Chapter 5, Article 12, Fees



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

---

**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT:** Arizona State Land Department  
Title 12, Chapter 5, Article 12

---

This Five-Year-Review Report (5YRR) from the State Land Department relates to rules in Title 12, Chapter 5, Article 12 regarding Fees. Article 12 consists of only one rule, R12-5-1201, which describes the fees the Department charges for certain applications, permits, and document filings.

In the previous 5YRR the Department proposed to amend the rule to include a fee related to the exchange of State Trust Land. The Department indicates they did not complete the changes for unknown reasons.

### **Proposed Action**

The Department does not propose to make any changes to the rule.

### **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 State Land Department oversees millions of acres of Trust land and associated natural resources. The land's trust status imposes certain constraints that would not apply if the State owned the land outright. The Department has determined that the economic impact of the rule has not changed since previous five-year review report in 2015.

The stakeholders include: the Department, state land applicants, current users of state land, 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 benefits outweigh the costs associated with the rule; and is the least costly method of achieving the regulatory objective. The Department has determined that although applicants are subject to a fee, that cost burden is on the applicant who wants to do business with the Department, as opposed to the general public. Additionally, the Department has determined these fees have helped supplement its general appropriations fund.

The Department does not intend to make any changes to the rules at this time.

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 on the rule.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the rules are clear, concise, understandable, effective, and consistent with other rules and statutes

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

Yes, the Department indicates the rule is enforced as written.

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

Not applicable, there is no corresponding federal law.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules were created before July 29, 2010.

**9. Conclusion**

As mentioned above the Department is not proposing to make any changes to the rule. The rule is clear, concise and understandable. Council staff recommends approval of this report.



Douglas A. Ducey  
Governor

Lisa A. Atkins  
Commissioner

## Arizona State Land Department

1616 West Adams, Phoenix, Arizona 85007  
(602) 542-4631

March 2, 2020

Arizona Department of Administration  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 402  
Phoenix, AZ 85007

Attn: Nicole Sornsins, Chairperson

RE: Arizona State Land Department's 5 Year Rule Review Report on A.A.C. Title 12, Chapter 5, Article 12

Dear Chairperson Sornsins:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Article 12. This document complies with the requirements under A.R.S. § 41-1056. The Department is not in compliance with A.R.S. § 41-1091 but is working diligently to become compliant.

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or [acalabresi@azland.gov](mailto:acalabresi@azland.gov).

Sincerely,

Lisa A. Atkins  
State Land Commissioner

Enclosures

# FIVE-YEAR RULE REVIEW REPORT

Submitted to

**THE GOVERNOR'S REGULATORY REVIEW COUNCIL**



**ARIZONA STATE LAND DEPARTMENT**

*"Serving Arizona's Schools and Public Institutions Since 1915"*

**TITLE 12 – Natural Resources  
CHAPTER 5 – State Land Department**

**Article 12 – Fees**

*Due February 29, 2020*

# **FIVE YEAR RULE REVIEW REPORT**

## **TITLE 12. NATURAL RESOURCES CHAPTER 5. STATE LAND DEPARTMENT**

### **Article 12 - Fees**

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## **FIVE-YEAR REVIEW REPORT FOR ARTICLE 12**

### **Summary**

The Administrative Procedures Act (APA) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor's Regulatory Review Council (the "Council") for review. The Arizona State Land Department (the "Department") is scheduled to file a review of its rules under Title 12, Chapter 5, Article 12 with the Council by the end of February 2020. The Department's complete rules are located in the Arizona Administrative Code ("A.A.C.") Title 12, Chapter 5, Articles 1 through 25 and can be found on the Department's website ([www.azland.gov](http://www.azland.gov)) as well as the Arizona Secretary of State's website ([www.azsos.gov](http://www.azsos.gov)).

The Department is not a regulatory agency. It functions as the trustee of the State's 9.2 million acres of Trust land and associated natural resources. The trust status of the lands granted to the State imposes obligations and constraints that would not apply if the State held the land outright. The Department's management of the Trust is governed by extensive and detailed provisions in Sections 24-30 of the State's Enabling Act, the Arizona Constitution (Article X), and statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate). In addition, extensive case law governs the Department's procedures and management of the Trust.

Article 12 has one rule, R12-5-1201 which describes the fees the Department charges for certain applications, permits, and document filings. The Department plans to retain the rule as written.

## **FACTORS ANALYZED AND IDENTICAL INFORMATION**

### **Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A):**

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S 40-1037; and
14. Course of action the agency proposes to take regarding each rule.

### **Identical Information for All the Rules**

Pursuant to A.A.C. R1-6-301(B), identical information shall be provided only once for any group of rules for which information on a particular issue is the same. Because there is only one rule being reviewed in this report, there is no information to articulate within this section.

## RULE ANALYSIS

### Article 12 Fees

#### A.A.C. Rule 12-5-2301 Administrative Fees

1. **Statutory Authority:**  
A.R.S. § 37-132; § 37-107(A)
2. **Objective:**  
The rule outlines the fees associated with certain applications and document filings made with the Department.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
No written criticism of this rule has been received by the Department during the past five years.
8. **Economic impact:**  
In 2011, the Department predicted that listing the fees in rule would allow its customers to continue to calculate the cost of conducting business with the Department. The Department believes the rule accomplishes this purpose.
9. **External Analysis of impact on business competitiveness:**  
No analysis has been received by the Department pertaining to the rule's impacts on the State's business competitiveness.

**10. Previous 5yRR Report Course of Action:**

In the previous five-year review report in 2015, the Department proposed to amend the rule to include a fee related to the exchange of State Trust Land. The Department did not complete the proposed course of action for unknown reasons. The Department currently does not think that a rulemaking to add a fee for the exchange of State Trust Land would be a prudent use of the Department's resources given the remote likelihood of processing an application for the exchange of State Trust Land.

**11. Cost v. Benefit and Least Burden Analyses:**

The Department believes the rule's probable benefits outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule while meeting their underlying objectives.

**12. Comparison with Federal Law:**

There are no corresponding federal laws applicable to this rule.

**13. A.R.S. § 40-1037 Compliance:**

This factor does not apply because the rule reviewed herein was not adopted after July 29, 2010.

**14. Course of Action Proposed:**

The Department plans to retain the rule as written.

## **Economic Impact Statement**

In Fiscal Year 2019, the Department generated \$1.2 million from the fees within this rule. These fees, derived directly from those wanting to transact business with the Department instead of the public at large, contribute to the Department's operating expenses and supplement its general fund appropriation.

[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 12. Fees \(Refs & Annos\)](#)

## A.A.C. R12-5-1201

## R12-5-1201. Administrative Fees

[Currentness](#)

The State Land Department shall charge the following fees for:

<b>Application Type</b>	<b>Fee</b>
Agricultural and Grazing - New (per section or fraction thereof)	\$150
Agricultural and Grazing - Renew	\$200
Commercial - New (10 years or less)	\$1,000
Commercial - New - long-term (more than 10 years)	\$2,000
Commercial - Renew (includes homesite)	\$1,000
Appraisal for long-term leases and land sales	Actual cost
Complete Assignment to an entity 100% controlled by assignor <b>or family member</b>	\$500
Partial assignment for long-term Commercial Lease only - (more than 10 years)	\$2,500
All other assignments	\$1,000
Application to Place Improvement	\$150
Application to Place Improvement without Prior Approval	\$200
Application for Land Treatment	\$150
Special Land Use Permits - New or Renew	\$300
Non-commercial Sovereign Land Boat Dock / Launch Ramp Permit	\$100
Application to Amend General	\$100
Sublease	\$200

Amendments for Commercial Lease - 10 years or less	\$500
Amendments for Commercial Lease - long-term (more than 10 years)	\$1,000
Lease Reinstatement	\$300
Replacement of lost documents	\$50
Certified copy of documents	\$10 + \$1 per page
Returned check	\$20
Miscellaneous filings: Power of Attorney, Probate Documents and Divorce Documents	\$50
Mortgage, Deed of Trust	\$50 per lease
Bond for conservation or purchase applications for conservation purposes	\$1,000
Right of Way - New or Renew	\$500
Right of Way - Amendment	\$100
Temporary Right of Entry	\$100
Application to Purchase	\$2,000
Certificate of Purchase (Issuance)	\$1,000
Patent (Issuance)	\$200
Application for Partial Patent	\$1,000
Natural Products - Commercial - Wood Products	\$200
Natural Products - Incidental Use Permit	\$200
Natural Products - Water	\$500
Mineral Materials	\$500
Minerals	\$500
Mineral Exploration (New or Renew)	\$500
Oil & Gas (New or Renew)	\$500
Geothermal	\$500
Recreational Annual Use - Individual	\$15

Recreational Permits (Group) Less than 5 days, Less than 20 people	\$15
Recreational Annual Use - Immediate Family Unit (Two adults and children under the age of 18)	\$20
Urban Planning Classification	\$1,000
Urban Planning Development	\$1,000

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**Credits**

Adopted as an emergency effective July 31, 1984, pursuant to [A.R.S. § 41-1003](#), valid for only 90 days (Supp. 84-4). Emergency expired. Permanent rule adopted effective November 1, 1984 (Supp. 84-6). Section R12-5-301 repealed, new Section adopted by emergency action and filed September 26, 1990, effective September 27, 1990, pursuant to [A.R.S. § 41-1026](#), valid for only 90 days (Supp. 90-3). Emergency expired, text of original Section placed back into effect December 27, 1990. Section R12-5-1201 renumbered from Section R12-5-301 (Supp. 93-3). R12-5-1201 repealed by summary action with an interim effective date of August 30, 1996; filed in the Office of the Secretary of State August 8, 1996 (Supp. 96-3). Adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996 now the permanent effective date (Supp. 96-4). New Section made by exempt rulemaking at 17 A.A.R. 813, effective April 22, 2011 (Supp. 11-2).

Current through rules published in Arizona Administrative Register Volume 26, Issue 5, January 31, 2020.

A.A.C. R12-5-1201, AZ ADC R12-5-1201

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**APPENDIX B**  
Related Statutes

Statutory Authority:

A.R.S. § 37-107 Fees; accounts

A.R.S. § 37-132 Powers and duties

[Arizona Revised Statutes Annotated](#)  
[Title 37. Public Lands \(Refs & Annos\)](#)  
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)  
[Article 1. State Land Department \(Refs & Annos\)](#)

A.R.S. § 37-107

§ 37-107. Fees; accounts

Effective: July 29, 2010

[Currentness](#)

**A.** The commissioner shall prescribe by rule application, permit, transaction, appraisal, service, filing and document fees for transactions related to the selling, leasing, annexation, conveyance, exchange, right-of-way and use of state lands or products of state lands managed by the department. Before adopting any rule setting or changing a fee under this section, the commissioner must submit the proposed fee amount to the joint legislative budget committee for review. The commissioner shall deposit the revenues derived from the fees in the trust land management fund pursuant to [§ 37-527](#).

**B.** The commissioner may establish selling and administrative fees, which may include:

1. Up to three per cent of the consideration paid for all lands and improvements sold or long-term leased.
2. Zoning application fees paid by the department to rezone land.
3. Legal advertising expenses required by law and paid by the department.

**C.** The revenues derived from the fees established pursuant to subsection B of this section shall be deposited as follows:

1. The revenues derived from the fees collected pursuant to subsection B, paragraph 1 of this section, less any amounts paid as brokerage fees pursuant to [§ 37-132, subsection B](#), paragraph 2, shall be deposited in the trust land management fund pursuant to [§ 37-527](#).
2. The monies collected pursuant to subsection B, paragraph 2 of this section as actual costs of zoning application fees paid by the department to rezone lands shall be deposited in a separate account of the state land department fund designated as the zoning application fee account. Monies in the account shall be used to pay zoning application fees if developing lands require rezoning by the jurisdiction in which the lands are located. The commissioner shall administer the account.
3. The monies collected under subsection B, paragraph 3 of this section, subsection D of this section and application evaluation and processing costs pursuant to [§ 37-205, subsection A](#) shall be deposited in separate accounts of the state land department fund to be used to pay costs of legal advertising, costs of appraisals required by the enabling act, by the Constitution of Arizona or by statute and the costs of evaluating and processing applications. The commissioner shall administer the accounts. On notice

from the commissioner, the state treasurer shall invest and divest monies in the state land department fund as provided by [§ 35-313](#), and monies earned from investment shall be credited to the fund.

**D.** The commissioner may require or allow prepayment for the estimated cost of an appraisal required pursuant to [§ 27-234](#) and this title. The commissioner shall deposit and administer prepayment monies as provided by subsection C, paragraph 3 of this section. The commissioner shall use monies accepted pursuant to this subsection to conduct contract appraisals. If an auction is held and an applicant who has prepaid the estimated cost of an appraisal or paid an appraisal fee is not the successful bidder, the successful bidder shall reimburse the applicant either for the actual cost of the appraisal or for the appraisal fee, whichever was paid. If the commissioner proceeds to auction on the commissioner's initiative, the successful bidder at auction shall reimburse the department for the actual cost of the appraisal, if there was a contract appraisal, or pay the appraisal fee if a contract appraisal was not obtained. Nothing in this subsection:

1. Requires the commissioner to offer any land at auction or for lease.
2. Requires the commissioner to reimburse an applicant if the land is not auctioned or leased.
3. Affects the status of any other application pending an appraisal.

**E.** Except as provided under [§ 37-205](#), fees paid under this section are not refundable to the applicant, regardless of the outcome of the application.

#### **Credits**

Added by [Laws 2010, Ch. 243, § 3](#).

A. R. S. § 37-107, AZ ST § 37-107

Current through legislation effective February 18, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

[Arizona Revised Statutes Annotated](#)  
[Title 37. Public Lands \(Refs & Annos\)](#)  
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)  
[Article 2. State Land Commissioner](#)

A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 29, 2012

[Currentness](#)

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to [§ 37-202](#).
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10<sup>1</sup> and, except as provided in [§ 41-1092.08, subsection H](#), are subject to judicial review pursuant to title 12, chapter 7, article 6.<sup>2</sup>
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.
8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4<sup>3</sup> and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to [§ 38-611](#).

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

**B.** The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under [§ 37-107, subsection B](#), paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20<sup>4</sup> and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to [§ 37-107](#).

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to [§ 9-461.06](#) or [11-805](#).

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to [§ 37-312](#).

(ii) Sold or leased at auction for conservation purposes.

**C.** The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

#### **Credits**

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; [Laws 1989, Ch. 171, § 1](#); [Laws 1992, Ch. 190, § 1](#); [Laws 1992, Ch. 357, § 1](#); [Laws 1993, Ch. 169, § 3, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 3](#); [Laws 1997, Ch. 221, § 167](#); [Laws 1997, Ch. 249, § 1](#); [Laws 1999, Ch. 209, § 1](#); [Laws 2000, Ch. 10, § 1](#); [Laws 2000, Ch. 113, § 158](#); [Laws 2002, Ch. 336, § 2](#); [Laws 2003, Ch. 69, § 2](#); [Laws 2010, Ch. 243, § 6](#); [Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011](#); [Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011](#); [Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012](#).

[Notes of Decisions \(40\)](#)

Footnotes

[1](#) Section 41-1092 et seq.

[2](#) Section 12-901 et seq.

[3](#) Section 41-741 et seq.

[4](#) Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

Current through legislation effective February 18, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

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**DEPARTMENT OF CHILD SAFETY**

Title 21, Chapter 5, Articles 3, Department Adoption Services and Article 4, Adoption  
Entity Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT:** Arizona Department of Child Safety  
Title 21, Chapter 5, Articles 3 & 4

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This Five-Year-Review Report from the Department of Child Safety relates to rules in Title 21, Chapter 5. The rules cover the following:

**Article 3 - Department of Adoption Services**

**Article 4 - Adoption Entity Services**

This is the first Five-Year-Review Report of these rules.

### **Proposed Action**

The Department is proposing to amend R21-5-421 to improve its clarity, conciseness, consistency with other rules and statutes, and effectiveness. The Department plans to complete a rulemaking by December 2020.

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

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department of Child Safety is the state agency that provides child welfare services, which includes adoption services, and is authorized by Arizona Revised Statutes to promote the placement of children in permanent adoptive homes. The Department indicates that as of January 31, 2020, there were 13,298 children ages zero to seventeen in out-of-home care. Of these children, 2,649 had a case plan goal of adoption.

There were no economic, small business and consumer impact statements prepared as part of the exempt rulemaking.

The stakeholders include The Department, adoption entities, adoptive parents and children, foster parents, and the 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 believes that the current rules pose the minimum cost and burden to the persons regulated by these rules. Article 3 pertains to services provided by the Department. Article 4 pertains to the services provided by adoption entities. It is the belief that any cost associated with the rules are offset by the greater benefit of ensuring the safety and protection of Arizona children while seeking a permanent adoptive home for them.

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 of the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, with the exception of R21-5-421, the rules are overall clear, concise, understandable, consistent with other rules and statutes, and effective.

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

Yes, with the exception of R21-5-421, the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than the corresponding federal laws; Adoption and Safe Families Act, Keeping Children Safe Families Safe Act, Adoption Promotion Act.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules do not require a permit or license.

**9. Conclusion**

As mentioned above, the Department is planning to amend one rule to improve its overall clarity, consciousness, effectiveness, and consistency with other rules and statues. The Department plans to complete a rulemaking by December 2020. Council staff recommends approval of this report.



**ARIZONA**  
DEPARTMENT  
*of* CHILD SAFETY

Mike Faust, Director  
Douglas A. Ducey, Governor

**March 30, 2020**

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Ms. Nicole Sornsinsin Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 5, Articles 3 and 4,  
Five Year Review Report**

Dear Ms. Sornsinsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 5, Articles 3 and 4 which is due on March 31, 2020.

DCS did not review R21-5-307 because the rule expired per A.R.S. § 41-1008(E).

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Angie Trevino, Rules Development and Policy Specialist, at 602-255-2569 or [angelica.trevino@azdcs.gov](mailto:angelica.trevino@azdcs.gov) or Magdalena Jorquez, Senior Legislative Counsel at 602-255-2527 or [magdalena.jorquez@azdcs.gov](mailto:magdalena.jorquez@azdcs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Faust", with a long horizontal line extending to the right.

Mike Faust  
Director

Enclosure

**ARIZONA DEPARTMENT OF CHILD SAFETY**

**Five-Year-Review Report**

**Title 21. Child Safety**

**Chapter 5. Department of Child Safety - Permanency and Support services**

**Article 3. Department of Adoption Services**

**Article 4. Adoption Entity Services**

**March 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-105, 8-112, 8-120, 8-121, 8-130, 8-171, 8-172, 8-173

**2. The objective of each rule:**

Article 3: Department Adoption Services

Rule	Objective
R21-5-301. Definitions	The objective of this rule is to provide a uniform set of definitions used throughout this Article, Article 4 of this Chapter, and Chapter 9 all under Title 21.
R21-5-302. Adoption Registry: Information Maintained; Confidentiality	The objective of this rule is to identify and define the Department's responsibility for maintenance of the Adoption Registry, content to be maintained, and information required for the release of information.
R21-5-303. Department Adoption Services	The objective of this rule is to identify the adoption services provided by the Department.
R21-5-304. Department Procedures for Processing Certification Applications	The objective of this rule is to provide a process for receipt of an adoption certification application and a process when the application is complete or incomplete.
R21-5-305. Department Priorities for Receipt of	The objective of this rule is to inform certification applicants about how the Department prioritizes applications.

Services	
R21-5-306. Department Recruitment Efforts	The objective of this rule is to provide a process the Department will follow for the recruitment of adoptive parents.
R21-5-308. Termination of Adoption Services	The objective of this rule is to identify when the Department considers it appropriate to terminate services to an applicant, adoptive parent and/or an adoptive child.

Article 4: Adoption Entity Services

Rule	Objective
R21-5-401. Definitions	The objective of this rule is to indicate that the definitions in Article 3 of this same Chapter also apply to this Article.
R21-5-402. Recruitment	The objective of this rule is to identify the elements required and prohibited when conducting adoption recruitment.
R21-5-403. Orientation: Persons Interested in Adoption	The objective of this rule is to establish that the adoption entity must provide an orientation process to persons seeking to adopt unless otherwise permitted by this rule.
R21-5-404. Application for Certification	The objective of this rule is to identify the requirements that an adoption entity must gather from a person seeking to adopt.
R21-5-405. Certification Investigation	The objective of this rule is to identify the requirements an adoption entity must complete conducting a certification investigation on the person seeking to adopt.
R21-5-406. Certification Report and Recommendation	The objective of this rule is to identify the information gathered and used to recommend or deny an applicant for certification and responsibility to notify the applicant of such recommendation.
R21-5-407. Renewal of Certification	The objective of this rule is to identify what is required to extend adoption certification beyond the expiration date.
R21-5-408. Communication with Adoptive Parents Awaiting	The objective of this rule is to outline the information the adoption entity is required to provide, upon request, to the certified adoptive parent awaiting placement.

Placement	
R21-5-409. Prohibitions Regarding Birth Parents	The objective of this rule is to identify information that cannot be provided to a birth parent who is signing a consent to an adoption.
R21-5-410. Information about Birth Parents	The objective of this rule is to identify information that should be obtained from the birth parent(s) consenting to an adoption.
R21-5-411. Pre- consent Conference with Birth Parents	The objective of this rule is to establish the requirements of a pre-consent conference with the birth parent(s) and the information that must be covered at the conference.
R21-5-412. Consent to Adopt; Unknown Birth Parents	The objective of this rule is to specify how the adoption entity will handle obtaining the consent of a birth parent and how the adoption agency will address the issue of the unknown birth parent.
R21-5-413. Adoptable Child: Assessment and Service Plan	The objective of this rule is to identify the steps the adoption entity is responsible for before placing a child in an adoptive placement.
R21-5-414. Placement Determination	The objective of this rule is to ensure that all parties to adoption are made aware of how an adoption entity or the Department makes a placement decision.
R21-5-415. Provision of Information on Placed Child	The objective of this rule is to ensure that prospective adoptive families receive essential non-identifying information about an adoptive child before making the adoptive placement.
R21-5-416. Transportation	The objective of this rule is to specify the safeguards required of an adoption entity when transporting an adoptive child, to assure the safety and protection of the child.
R21-5-417. Placement Services	The objective of this rule is to provide information on post-placement services available to adoptive parents.
R21-5-418. Post- placement Supervision: Non- foster Parent	The objective of this rule is to identify what is required of the adoption entity when providing post-placement supervision of children being adopted by non-foster parents.

Placement	
R21-5-419. Post-placement Supervision: Foster Parent Placement	The objective of this rule is to identify what is required of the adoption entity when providing post-placement supervision of children being adopted by foster parents.
R21-5-420. Protracted Placement	The objective of this rule is to prevent unnecessary protracted placements by providing a disincentive to an adoption entity. It requires the adoption entity to report to the Department the reason why an adoption has not finalized after two years.
R21-5-421. Finalizing the Placement	The objective of this rule is to identify what information the adoption entity must provide to the court before the hearing on the petition to adopt.
R21-5-422. Placement Disruption	The objective of this rule is to identify what is required of the adoption entity when an adoptive placement disrupts.
R21-5-423. Confidentiality	The objective of this rule is to require persons who participate in adoption to abide by statutory confidentiality requirements.

3. **Are the rules effective in achieving their objectives?** Yes X No    

4. **Are the rules consistent with other rules and statutes?** Yes     No X

Rule	Explanation
R21-5-421. Finalizing the Placement	R21-5-421 (1) states that entity must provide the court with documents and information at least 14 days before the final adoption hearing. This does not comply with A.R.S. § 8-112 (A) which states that a social study must be submitted to the court ten days before the hearing on the petition to adopt. DCS currently follows the statute requirements.

5. **Are the rules enforced as written?** Yes     No X

Rule	Explanation
R21-5-421. Finalizing the Placement	As identified in #4 above, rule is not consistent with statute. DCS follows the statute requirements.

6. **Are the rules clear, concise, and understandable?** Yes X No

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 Department adopted rules in Title 21, Chapter 5, Articles 3 and 4 under its own title (Title 21. Child Safety) on January 24, 2016. There were no economic, small business and consumer impact statements prepared as part of the exempt rulemaking.

The Department of Child Safety is the state agency that provides child welfare services, which includes adoption services, and is authorized by Arizona Revised Statutes to promote the placement of children in permanent adoptive homes. The Department provides adoption services, contracts with private agencies to recruit adoptive homes, and licenses adoption agencies (Title 21, Chapter 9) in Arizona. The goal of adoption services is to place children with qualified adoptive parents in a permanent adoptive home.

Article 3 provides information pertaining to the services provided by the Department. Article 4 speaks to the responsibility of adoption entities.

As of January 31, 2020, there were 13,298 children ages zero to seventeen in out-of-home care. Of these children, 2,649 had a case plan goal of adoption.

The Department provides an array of accessible and individualized services designed to support permanency and adoption of children in the care of DCS. The Department directly or through contracts with private agencies provides the following adoption services:

- Recruits prospective adoptive parents.
- Informs persons interested in adopting a child about the adoption process.
- Conducts certification investigations of prospective adoptive parents.
- Takes adoption consents from birth parents.
- Prepares non-identifying, preplacement information on adoptive children for adoptive parents.
- Submits the names and profiles of adoptable children and certified adoptive parents for listing in the Central Adoption Registry.
- Prepares children for adoptive placement.
- Matches adoptable children with certified adoptive parents.
- Places adoptable children in the homes of certified adoptive parents.
- Investigates and reports to the court on the suitability of particular placements.
- Conducts social studies and preparing final reports to the court.
- Assists attorneys and families to complete the adoption process.

Adoption services provided by the Department are not assigned to specialized units; therefore, the number of employees dedicated to provide services under Article 3 is not available. The Department licenses approximately 17 private adoption agencies. Additionally, the Department contracts with 26 agencies to provide foster and adoption support services through DCS.

Funding for adoption services in FY 2019

- For adoption certification, the Department has expended \$563,675. This is funded by Title IV-E federal funds and State General Funds.
- For adoption promotion, the Department has expended \$278,208. This is funded by Title IV-B part II federal funds and State General Funds.
- For child specific recruitment, the Department as expended \$892,500. This is funded by Title IV-E federal funds and State General Funds.

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?**

This is the first review of the rules in Title 21, Chapter 5 Articles 3 and 4. The rules in these Articles were made by final exempt rulemaking, published in 21 A.A.R. 3255 on December 18, 2015 and became effective on January 24, 2016.

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

The Department believes that the current rules pose the minimum cost and burden to the persons regulated by these rules. Article 3 pertains to services provided by the Department. Article 4 pertains to the services provided by adoption entities. It is the belief that any cost associated with the rules are offset by the greater benefit of ensuring the safety and protection of Arizona children while seeking a permanent adoptive home for them.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

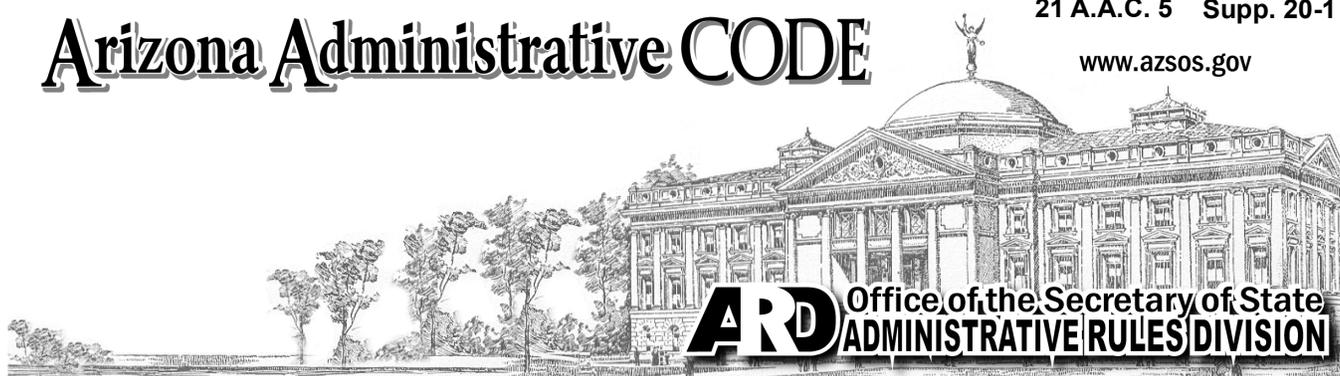
Federal laws that apply to the rules of this Article includes the following: Adoption and Safe Families Act (ASFA) (P.L. 105-89); Adam Walsh Child Protection and Safety Act (P.L. 109-248); Adoption Promotion Act 2003 (P.L. 108-145); and Keeping Children and Families Safe Act 2003 (P.L. 108-36). The rules in these Articles are not more stringent than federal law.

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

The Department has determined that A.R.S. 41-1037 does not apply to these rules because these rules do not require the issuance of a regulatory permit, license, or agency authorization.

**14. Proposed course of action**

The Department plans to request a moratorium exemption from the Governor's Office in accordance with Executive Order 2020-02 and to amend rules to address the concerns identified in this five-year-review report. The Department plans to complete and submit rulemaking for Council's review by December 2020.



## TITLE 21. CHILD SAFETY

### CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

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 January 1, 2020 through March 31, 2020 (Supp. 20-1).

[R21-5-201. Definitions ..... 2](#)      [R21-5-205. Out-of-home Care Services for Foster Youth 18 through 20 Years of Age ..... 5](#)

#### Questions about these rules? Contact:

Name: Magdalena Jorquez, Senior Legislative Liaison  
 Address: Department of Child Safety  
 3003 N. Central Ave.  
 Phoenix, AZ 85012  
 Telephone: (602) 255-2527  
 E-mail: Magdalena.Jorquez@azdcs.gov  
 Or  
 Name: Angie Trevino, Rules Development and Policy Specialist  
 Address: Department of Child Safety  
 3003 N. Central Ave.  
 Phoenix, AZ 85012  
 Telephone: (602) 255-2569  
 E-mail: angelica.trevino@azdcs.gov  
 Website: <https://dcs.az.gov/about/dcs-rule-rulemaking>

#### The release of this Chapter in Supp. 20-1 replaces Supp. 19-3, 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

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### 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](http://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](http://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

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*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 21. CHILD SAFETY

CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

Authority: A.R.S. § 8-453(A)(5)

Editor's Note: Chapter 5 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Article 1, consisting of Sections R21-5-101 through R21-5-107, made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

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R21-5-101. Definitions 2
R21-5-102. Authority 2
R21-5-103. Conditions of Placement 2
R21-5-104. Financial Responsibility 2
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R21-5-106. Placement Approval 2
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ARTICLE 2. INDEPENDENT LIVING AND TRANSITIONAL INDEPENDENT LIVING PROGRAMS

Article 2, consisting of Sections R21-5-201 through R21-5-209, made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

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## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

**ARTICLE 1. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN****R21-5-101. Definitions**

The definitions contained in A.R.S. § 8-548 and the following definitions apply in this Article:

1. "Child" means any person less than the age of 18 years.
2. "Compact" or "ICPC" means the Interstate Compact on the Placement of Children.
3. "Compact Administrator" means the same as A.R.S. § 8-548.
4. "Compact State" means a state that is a member of the Interstate Compact on the Placement of Children.
5. "Department" or "DCS" means the Arizona Department of Child Safety.
6. "Interstate placement" means any movement of a child from one state to another state for the purpose of establishing a suitable living environment and providing necessary care.
7. "Intra-state placement" means the placement of a child within a state by an agency of that state.
8. "Placement" means the same as in A.R.S. § 8-548.
9. "Receiving state" means the same as in A.R.S. § 8-548.
10. "Sending agency" means the same as in A.R.S. § 8-548.
11. "Sending state" means the state where the sending agency is located, or the state in which the court holds exclusive jurisdiction over a child, which causes, permits, or enables the child to be sent to another state.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-102. Authority**

The ICPC is governed by A.R.S. §§ 8-548 through 8-548.06 and the ICPC regulations. ICPC regulations are posted on the Association of Administrators of the Interstate Compact on the Placement of Children website. These regulations supplement those authorities and must be read in conjunction with them.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-103. Conditions of Placement**

No person, court, or public or private agency in a Compact State shall place a child in another Compact State until the Compact Administrator in the receiving state has notified the Compact Administrator in the sending state, on a prescribed form, that such placement does not appear to be contrary to the interests of the child and does not violate any applicable laws of the receiving state.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-104. Financial Responsibility**

The sending person, court, or public or private agency shall be held financially responsible for:

1. Sending the child to the receiving state;
2. Returning the child to the sending state; and
3. Treatment of the child during the period of placement.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-105. Applicability**

A. Except as listed in subsection B, the ICPC applies to the placement of:

1. Children in another Compact State by an agency, court or person, which has care or custody of the children.
  2. Foreign-born children who are brought under the jurisdiction of a Compact State by an international child placing agency.
- B. In addition to the children listed in statute that are not subject to ICPC, the ICPC does not apply:
1. When a child is placed in an institution caring for the mentally ill, mentally impaired, epileptic, or in any institution primarily educational in character or in any hospital or other medical facility.
  2. To the placement of children into and out of the United States when the other jurisdiction involved is a foreign country.
  3. When a sending court or agency seeks an independent (not ICPC related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court or agency and the person or party in the receiving state who agrees to conduct the courtesy check without invoking the protection of the ICPC home study process. This does not prohibit a sending state from requesting an ICPC.
  4. The Compact does not apply in court cases of paternity, divorce, custody, and probate pursuant to which or in situations where children are being placed with parents or relatives or non-relatives.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-106. Placement Approval**

Sending and receiving states must obtain approval from the Compact Administrator in both the sending and receiving states prior to the placement of a child in another Compact State.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**R21-5-107. Operations**

In providing services provided under this Article, the sending and the receiving state shall:

1. Maintain all information required by state and federal law.
2. Comply with all federal and their respective state laws and regulations regarding the disclosure and use of confidential health and personal information.
3. Comply with all federal and their respective state non-discrimination laws and regulations.
4. Ensure that interpreters, including assistance for the visually or hearing impaired, are available to those receiving services at no cost.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

**ARTICLE 2. INDEPENDENT LIVING AND TRANSITIONAL INDEPENDENT LIVING PROGRAMS****R21-5-201. Definitions**

The following definitions apply to this Article:

1. "Active participation" means the foster youth is demonstrating efforts toward completion of case plan goals such as regular attendance at school or employment that results in school credits or earned wages.
2. "Aftercare services" means assistance and support available to eligible, former foster youth living in Arizona

## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

- after the Department, tribal foster care, or other state foster care case is dismissed, and includes services available through the Transitional Independent Living Program.
3. "Age of majority" means that a person is at least 18 years old.
  4. "Approved living arrangement" means a residence that has been reviewed by the assigned Child Safety Worker or other responsible agency staff and approved within the individual case plan.
  5. "Arizona Young Adult Program" means a group of programs and services designed to assist eligible youth to make a successful transition to adulthood. The programs and services include Independent Living Services, the Independent Living Subsidy Program, Voluntary Out-of-home Care for Foster Youth 18 through 20 Years of Age, and the Transitional Independent Living Program.
  6. "Child placing agency" means the same as in A.R.S. § 8-501(A)(1)(a)(iii), and includes a Child Welfare Agency that OLR licenses as a Placing Agency to place a child in a licensed foster home, or facility.
  7. "Child Welfare Agency" means the same as in A.R.S. § 8-501.
  8. "Child Safety Worker" means the same as in A.R.S. § 8-801.
  9. "Custody of the Department" means that the foster youth:
    - a. Is in out-of-home care under the supervision of the Department while the subject of a dependency petition, as an adjudicated dependent, or placed voluntarily under A.R.S. § 8-806; or
    - b. Is 18, 19, or 20 years of age, a resident of Arizona, and has signed an individual case plan agreement for voluntary out-of-home care. This includes foster youth who were dually adjudicated (dependent and delinquent) and released from a secure setting prior to, or on the foster youth's 19th birthday.
  10. "Department" or "DCS" means the Arizona Department of Child Safety.
  11. "Eligible youth" means a person who meets the qualifications in A.R.S. § 8-521 for the Independent Living Program, the qualifications in A.R.S. § 8-521.01 for the Transitional Independent Living Program, or is a person who was formerly in another state's child welfare program who would otherwise be eligible.
  12. "Employment" means:
    - a. Paid employment;
    - b. Participation in employment-readiness activities, which include career assessment and exploration, and part time enrollment in an employment or career readiness education program;
    - c. Volunteer positions;
    - d. Job-shadowing;
    - e. Internship; or
    - f. Other paid or unpaid employment-related activities.
  13. "Extraordinary purchase" means an expenditure by an eligible youth that impedes an eligible youth's ability to meet the financial obligations outlined in the eligible youth's budget.
  14. "Foster youth" means a person in the custody of the Department.
  15. "Full-time student" means an eligible youth enrolled in an education program identified by the program as being full-time due to the number of credits, credit hours, or other measure of enrollment.
  16. "Independent Living Program" means the program authorized by A.R.S. § 8-521 to provide an Independent Living Subsidy and educational case management to a foster youth.
  17. "Independent Living Services" or "IL Services" means an array of assistance and support services, including those provided under the Independent Living Program, that the Department provides, contracts, refers, or otherwise arranges that are designed to help a foster youth transition to adulthood by building skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
  18. "Independent Living Subsidy" or "IL Subsidy" means a monthly stipend provided under the Independent Living Program to a foster youth, to assist in meeting monthly living expenses. This stipend replaces any foster care maintenance payment from the Department for support of the foster youth's daily living expenses.
  19. "Individual case plan" means an agreement between an eligible foster youth and the Department, directed by the foster youth that documents specific services and assistance that support the foster youth's goals in relation to:
    - a. Natural supports including permanent connections to and relationships with family and community, including peer and community mentors;
    - b. A safe, stable, desired living arrangement, which may include a permanent arrangement such as guardianship or adoption;
    - c. Daily living skills;
    - d. Secondary and postsecondary education and training;
    - e. Employment and career planning;
    - f. Physical health, including reproductive health;
    - g. Life care planning;
    - h. Emotional health;
    - i. Mental health;
    - j. Spiritual or faith needs;
    - k. Interpersonal relationships; and
    - l. Age-appropriate extra-curricular, enrichment, and social activities.
  20. "Individual service plan" means an agreement that is directed by an eligible youth in the TIL Program that documents specific services and assistance to support the eligible youth's goals including, as applicable:
    - a. Financial,
    - b. Housing,
    - c. Counseling,
    - d. Employment,
    - e. Education, and
    - f. Other appropriate support and services.
  21. "Life skills assessment" means a measure of an eligible youth's ability to function in a variety of areas such as daily living skills, knowledge of community resources, and budgeting, as determined by a validated assessment tool.
  22. "Medical professional" means a doctor of medicine or osteopathy, physician's assistant, or registered nurse practitioner licensed in A.R.S. Title 32, or a doctor of medicine licensed and authorized to practice in another state or foreign country. A medical professional from another state or foreign country must provide verification of valid and current licensure in that state or country.
  23. "Misuse of funds" means that an eligible youth has expended money provided by the Department for specific purposes (such as education or living expenses) on an item that is not permitted by law (such as illegal drugs and alcohol), or on an extraordinary purchase that is not included in an approved budget or individual case or ser-

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- vice plan, to the degree that the funds are not available for necessary items and purchases approved within the case plan, service plan, or budget.
24. "Natural supports" means relationships and connections that occur in everyday life, independent of formal services, with people or groups who provide personal or other support during a person's lifetime.
  25. "Out-of-home care" means a placement approved by the Department such as a licensed foster home, residential group care facility operated by a Child Welfare Agency, therapeutic residential facility, independent living setting, approved unlicensed independent living setting, or in a relative or non-relative placement. Out-of-home care excludes a detention facility, forestry camp, training school, or any other facility operated primarily for the detention of a child who is determined delinquent.
  26. "Personal Crisis" means an unexpected event or series of events in an eligible youth's life that prevents or impedes participation in scheduled services or activities.
  27. "Residential group care facility" means a Child Welfare Agency that is licensed to receive more than five children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, child placing agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time.
  28. "Responsible agency staff" means the assigned Child Safety Worker, another identified Department employee, or contracted staff.
  29. "Service team members" means the eligible youth, the youth's attorney(s), the Guardian ad Litem (GAL), the Court Appointed Special Advocate (CASA), tribal child welfare staff, other parties to the dependency case, contract, or other service providers, responsible agency staff, and other adults involved with the youth or supporting the youth's activities or employment.
  30. "Substantial non-compliance" means an eligible youth's:
    - a. Termination from an educational, vocational, or employment program due to lack of attendance or failure to make satisfactory progress as defined by the program for reasons unrelated to physical health including pregnancy, emotional, or mental health;
    - b. Persistent lack of communication during a 60-day period with the assigned Child Safety Worker or other responsible agency staff known to the youth that results in a loss of contact with the eligible youth, or interferes with the Department's ability to provide services and supervision or to document individual case plan or service plan progress;
    - c. Persistent misuse of funds provided to support individual case plan or service plan goals; or
    - d. For an eligible foster youth, failure to communicate unexpected changes in the living arrangement as agreed to in the individual case plan or the Independent Living Subsidy agreement.
  31. "Transitional Independent Living Program" or "TIL Program" means a program of services for residents of Arizona who are eligible youth under A.R.S. § 8-521.01, that provides assistance and support in counseling, education, vocation, employment, and the attainment or maintenance of housing.
  32. "Transitional Independent Living Services" or "TIL Services" means those services the Department provides through the Transitional Independent Living Program under A.R.S. § 8-521.01, and may include assistance and support with health care, money management, housing, counseling, education, vocational training, and employment. The Department or its contractors provide services through a written agreement with the eligible youth.
  33. "Validated assessment tool" means a written or verbal survey tool that can demonstrate empirical evidence for reliability and validity.
  34. "Work day" means Monday through Friday, excluding Arizona state holidays.
  35. "Young Adult Transitional Insurance" means a category of health care coverage under the state Medicaid program (Arizona Health Care Cost Containment System or AHCCCS) for Medicaid eligible youth who have reached the age of majority in foster care.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4). Amended by emergency rulemaking at 25 A.A.R. 771, effective March 21, 2019, for 180 days (Supp. 19-1). Emergency amendments renewed at 25 A.A.R. 2485, for an additional 180 days effective September 18, 2019 (Supp. 19-3). Emergency expired; amended by final rulemaking at 26 A.A.R. 241, effective March 15, 2020 (Supp. 20-1).

**R21-5-202. Provision of Services**

- A. The Department shall provide services and stipends for the IL Services, IL Subsidy, and TIL services to eligible youth in a manner that is fair and equitable.
- B. The Department shall provide Independent Living Services to eligible foster youth based on needs identified by the eligible foster youth, by service team recommendations, or the findings of a life skills assessment. The services shall address needs identified in the eligible foster youth's individual case plan and may include one or more of the following, depending on the individual case plan goals:
  1. Information and assistance to create and maintain a network of natural supports;
  2. Independent living skills training;
  3. Program incentives;
  4. Information and assistance in life care and health care planning, including enrollment in a health plan;
  5. Educational, career, and vocational planning;
  6. Financial assistance for post-secondary education and training;
  7. Out-of-home care for foster youth 18 through 20 years of age; or
  8. Aftercare services through the Transitional Independent Living Program.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-203. Denial of Services**

The Department shall deny services if a person does not meet the eligibility requirements of A.R.S. §§ 8-806, 8-521, 8-521.01, and R21-5-204.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-204. Eligibility**

- A. Independent Living Services. In order to be eligible for IL Services a person shall:
  1. Be at least 16 years of age and less than 21 years of age;

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2. Be in the custody of the Department or tribal child welfare agency;
  3. Reside in out-of-home care;
  4. Be referred by the eligible youth's assigned Child Safety Worker, other Department staff, or a tribal social services representative; and
  5. Be a resident of Arizona if 18, 19, or 20 years of age.
- B. Independent Living Subsidy.**
1. In order to be eligible for the IL Subsidy, a person shall:
    - a. Be at least 17 years of age, in the custody of the Department, and employed or a full-time student.
    - b. With the assistance of the responsible agency staff, complete the Independent Living Subsidy Agreement or other approved forms designated by the Department.
  2. Conditions for approval and continuation in the Independent Living Subsidy Program include:
    - a. Active participation in activities outlined in the individual case plan;
    - b. Adherence to the terms of the IL Subsidy Agreement, including:
      - i. Communication with the Child Safety Worker;
      - ii. Maintenance of a Department-approved living arrangement, including approval of a roommate, except those assigned by school or work; and
      - iii. Participation in scheduled meetings to review progress and update the individual case plan and IL Subsidy Agreement.
  3. Eligible youth 18, 19, and 20 years of age who are temporarily residing out of state for the purpose of education or vocational training, and who maintain Arizona residency, may receive the Independent Living Subsidy under the same conditions as above.
- C. Transitional Independent Living Program.** Under A.R.S. § 8-521.01, in order to be eligible for the Transitional Independent Living Program, a person must be less than 21 years of age and have been in out-of-home care and in the custody of the Department, a licensed residential group care facility, or a tribal child welfare agency while 16, 17, or 18 years of age. Persons who were in another state's child welfare agency under the same conditions are also eligible.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-205. Out-of-home Care Services for Foster Youth 18 through 20 Years of Age**

- A.** The Department may provide out-of-home care services and supervision to a foster youth less than 21 years of age, who reached the age of 18 years while in the custody of the Department, and was either in out-of-home care or in secure care, as defined by A.R.S. § 8-201, through a delinquency action, when the foster youth:
1. Requests out-of-home care;
  2. Has residency in the state of Arizona;
  3. Participates in developing an individual case plan agreement for out-of-home care; and
  4. Demonstrates acceptance of personal responsibility for his or her part of the agreement through active participation in the individual case plan.
- B.** The foster youth, Child Safety Worker, and involved service team members shall develop the individual case plan for out-of-home care:

1. Within the 90-day period prior to the foster youth's 18th birthday for foster youth continuing in out-of-home care past 18 years of age;
  2. Within ten work days for foster youth who enter out-of-home care during the 90-day period prior to the foster youth's 18th birthday; and
  3. For eligible youth re-entering foster care at 18 years of age or older, within seven work days of the eligible youth's return to Department care and supervision.
- C.** The individual case plan shall outline the services and supports to be provided under R21-5-202(B) and include at least one of the following activities:
1. Completion of secondary education or a program leading to an equivalent credential;
  2. Enrollment in an institution that provides post-secondary education or vocational education;
  3. Participation in a program or activity designed to promote or remove barriers to employment; or
  4. Employment of at least 80 hours per month.
- D.** Foster youth participating in out-of-home care shall demonstrate acceptance of personal responsibility by actively participating in an individual case plan, unless prevented by a documented behavioral health or medical condition, or other personal crisis or life event, such as pregnancy, birth, necessary maternity leave as determined by a medical professional, adoption, or guardianship of a child.
- E.** The Child Safety Worker shall support the foster youth to address any documented condition, crisis, or life event listed in subsection (D), by:
1. Facilitating a youth led discussion that includes a review of the supports and services available as intervention strategies, to assist in resolving the condition, crisis, or concern;
  2. Documenting the foster youth's preferred intervention strategy for addressing the condition, crisis, or concern; and
  3. Expeditiously providing or otherwise arranging the preferred intervention strategy.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4). Amended by emergency rulemaking at 25 A.A.R. 771, effective March 21, 2019, for 180 days (Supp. 19-1). Emergency amendments renewed at 25 A.A.R. 2485, for an additional 180 days effective September 18, 2019 (Supp. 19-3). Emergency expired; amended by final rulemaking at 26 A.A.R. 241, effective March 15, 2020 (Supp. 20-1).

**R21-5-206. Transitional Independent Living Program**

- A.** The Transitional Independent Living Program provides services to eligible youth, under A.R.S. § 8-521.01 that complements their own efforts toward becoming self-sufficient. The Department may provide the following assistance, depending on individual service plan goals:
1. Financial,
  2. Housing,
  3. Counseling,
  4. Employment,
  5. Education, and
  6. Other appropriate support and services.
- B.** The eligible youth requesting services through the Transitional Independent Living Program shall provide the following information to the responsible agency staff:
1. Identifying information including:
    - a. Name (and any aliases); and

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- b. Date of birth;
- 2. Information regarding the eligible youth's former foster care status such as the state or tribal child welfare system where the youth was in care, and approximate dates of care, if known; and
- 3. Any available contact information for the youth, including:
  - i. Phone number,
  - ii. Friend or family phone number,
  - iii. Email address, and
  - iv. Any other communication method identified by the youth.
- C. An eligible youth and responsible agency staff shall develop an individual service plan for the eligible youth to receive these services.
- D. The individual service plan shall address the level of need based on the items noted in subsection (A).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-207. Re-entry Into Out-of-home Care**

- A. The Department shall facilitate re-entry into out-of-home care for eligible youth participating in the Transitional Independent Living Program.
- B. On request for re-entry by the eligible youth, the Department shall confirm the eligible youth's request to receive out-of-home care, supervision, and other services with the youth and within ten work days:
  - 1. Facilitate a meeting with the eligible youth to review the requirements under R21-5-205;
  - 2. Assist the eligible youth to develop an individual case plan that includes an effective date for reopening the Department case;
  - 3. Identify the name and contact information of the Child Safety Worker or responsible agency staff assigned to the case;
  - 4. Identify the out-of-home care type selected such as, foster home, residential group care facility, Independent Living Program, or other arrangement;
  - 5. Notify the identified Child Safety Worker or responsible agency staff assigned to the case; and
  - 6. Complete all necessary authorizations for out-of-home care and other services to reasonably ensure a smooth transition from the TIL Services to the IL Services.
- C. If the eligible youth reports he or she is in crisis and unsafe, the Department shall immediately assess the youth's safety and assist the youth to secure a safe living arrangement and to manage the crisis.
- D. An eligible youth may request to postpone re-entry, decline re-entry at any time, or re-initiate the request any time prior to the eligible youth's 21st birthday. The responsibilities of the Department to process the request for re-entry shall begin upon the Department's receipt of the eligible youth's request for re-entry under subsection (B).
- E. Supports and services shall continue for youth who re-enter out-of-home care, as outlined in R21-5-205.
- F. If the Department denies re-entry, the Department shall provide the youth with written notification of the reason for this decision and the youth's grievance and appeal rights within 15 work days of the request for re-entry.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-208. Termination of Services**

- A. The Department may terminate IL Services, including out-of-home care for foster youth 18 through 20 years of age, and TIL services if the eligible youth:
  - 1. Reaches the age of 21 years;
  - 2. Reaches the age of 18 years and does not desire continued services;
  - 3. Makes a voluntary decision to terminate services; or
  - 4. Demonstrates substantial non-compliance or otherwise refuses to meet the requirements of the individual case plan or individual service plan after the responsible agency staff or designee has made active efforts to engage the eligible youth in identifying and resolving issues, including assessing the effectiveness of current services, and identifying and providing additional or different support services.
- B. The Department shall deny IL Services, including out-of-home care for foster youth age 18 through 20 years, and TIL services if the Department determines the person is:
  - 1. Not eligible;
  - 2. Unwilling to create an individual case or service plan; or
  - 3. Not participating in the individual case or service plan.
- C. The Child Safety Worker or responsible agency staff shall notify the person in writing of the Department's decision to terminate or deny services within ten work days of the person's application for services.
- D. The notice shall include information on the person's right to grieve any decision to terminate or deny services.
- E. Within ten work days of the notice to terminate or deny services, the Child Safety Worker or responsible agency staff shall contact the person to:
  - 1. Assist the person through the grievance process including the completion and submittal of any required Department forms; or
  - 2. Identify and engage a personal advocate to assist the person through the grievance process, including the completion and submittal of any required Department forms.
- F. When termination of services to a foster youth is planned due to one of the reasons outlined in (A)(1) through (3) of this Section, the Child Safety Worker or responsible agency staff shall schedule a discharge staffing with the foster youth within ten work days of the foster youth's 21st birthday or the Department's receipt of the foster youth's notice to discontinue services to provide any necessary documents not previously provided, such as a birth certificate, social security card, state identification card, credit report, and a copy of the foster youth's health and education records.
- G. The Department shall not terminate services for substantial non-compliance under subsection (A)(4) until the Child Safety Worker or responsible agency staff satisfies all responsibilities including:
  - 1. Staffing of the individual case or service plan;
  - 2. Adhering to the grievance process described in R21-5-209; and
  - 3. Developing and implementing a discharge plan that provides information on available community resources, and connects the person to those resources.
- H. Services shall remain in effect until the reasons for termination are resolved or the grievance or appeal process is completed.
- I. For Independent Living Subsidy only, if the Department determines that continuation of the Independent Living Subsidy would place the foster youth at risk of immediate harm, the Child Safety Worker or responsible agency staff shall:
  - 1. Document this fact in the case file progress notes, and

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2. Arrange for a safe living arrangement and sufficient support services to reasonably ensure the foster youth's safety in the interim.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-209. Grievance Process**

- A. A person eligible for services under R21-5-204 who disagrees with a Department adverse action decision to reduce, terminate, or deny services for that person may:
  1. File a grievance under this Section;
  2. Choose not to file a grievance and appeal the adverse action under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the adverse action decision reducing, terminating, or denying services; or
  3. File a grievance, and if the person is dissatisfied with the results of the grievance process, appeal under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the grievance response letter.
- B. In the event that a person disagrees with a Department decision to reduce, terminate, or deny services, the Child Safety Worker or responsible agency staff shall:
  1. Inform the person of the formal grievance process;
  2. Provide the person with the Department's grievance form and directions for submittal to the designated Department staff, such as the Department's Ombudsman's Office; and
  3. Offer to assist the person in completing and submitting the form, or referring the person to the appropriate Department staff, such as the Department's Ombudsman, for assistance in completing and submitting the form.
- C. Upon receipt of the grievance form, the Department shall:
  1. Schedule a face-to-face meeting with the person who filed the grievance within seven work days from the date the grievance was received by the Department, or schedule a teleconference if a face-to-face meeting is not possible;
  2. Evaluate the grievance to determine if the grievance can be resolved by the Department to the satisfaction of the person;
  3. Mail a grievance response letter to the person within three work days of the meeting; and
  4. Include an appeal form with the grievance response letter so the person may appeal the adverse action.
- D. If the person agrees with the Department's decision to terminate services, the Child Safety Worker or responsible agency staff shall proceed with case closure including completing a discharge plan with the person that includes information on aftercare services and other community based support.
- E. The Department shall retain documentation of all grievances in the case file according to the Department's retention schedule.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**ARTICLE 3. DEPARTMENT ADOPTION SERVICES****R21-5-301. Definitions**

In addition to the definitions in A.R.S. § 8-101, the following definitions apply in this Article, Article 4 of this Chapter, and 21 A.A.C. 9:

1. "Adoptable child" means a child who is legally available for adoption but who has not been placed for adoption.

2. "Adoptee" means a child who is the subject of a legal petition for adoption.
3. "Adoption agency" means an individual or entity, including a corporation, company, partnership, firm, association, or society, other than the Department, licensed by the Department to place a child for adoption.
4. "Adoption entity" or "entity" means the Department and includes an adoption agency, but does not include a private attorney who is licensed to practice law in the state of Arizona and who is only assisting in a direct placement adoption to the extent allowed by A.R.S. § 8-130(C).
5. "Adoption placement" or "placement" means the act of placing an adoptable child in the home of an adoptive parent who has filed, or is contemplating filing, a petition to adopt the child.
6. "Adoption Registry" means the electronic database described in A.R.S. § 8-105.
7. "Adoption services" means activities conducted in furtherance of an adoption and includes the activities listed in A.A.C. R21-5-303 and R21-9-201(B).
8. "Adoptive parent" means an individual who has successfully completed the application process and has been certified by the court to adopt. An adoptive parent includes an individual who does not have a child placed in their home.
9. "Agency placement" means the child is placed in an adoptive home chosen by the adoption agency.
10. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the State's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes under A.R.S. Title 36, Chapter 29.
11. "Applicant" means an individual who has applied to become an adoptive parent.
12. "Birth parent" means the biological mother or father of a child.
13. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
14. "Certification application" means the form that an applicant submits to an adoption entity or to the court to request a certification investigation to become certified as an adoptive parent.
15. "Certification investigation" means the process referred to in A.R.S. § 8-105(C) by which an adoption entity determines if an applicant is a fit and proper person to adopt.
16. "Certification order" means a judicial determination that an applicant is acceptable to adopt children.
17. "Certification report" or "adoptive home study" means the written report described in A.R.S. § 8-105, in which an adoption entity summarizes the results of a certification investigation and makes a recommendation for or against certification of an applicant.
18. "Child with special needs" means a child who has one of the special needs listed in A.R.S. § 8-141.
19. "Department" or "DCS" means the Arizona Department of Child Safety.
20. "Developmentally appropriate" means an action that takes into account:
  - a. A child's age and family background;
  - b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
  - c. A child's pattern and history of growth, personality, and learning style.

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21. "Direct placement" means the child is placed in an adoptive home by the birth parent or legal parent.
  22. "Final report to the court" means a written report that includes a social study under A.R.S. § 8-112, in which an adoption entity advises the court of the entity's assessment and recommendations about the finalization of a particular adoption.
  23. "Foster parent" means the same as in A.R.S. § 8-501.
  24. "ICPC" means the Interstate Compact on the Placement of Children described in A.R.S. § 8-548.
  25. "ICWA" means the Indian Child Welfare Act described in 25 U.S.C. 1901 et seq.
  26. "Legally available" means a child whose birth or legal parents are deceased, have voluntarily relinquished their parental rights, or whose parental rights have been terminated by the court.
  27. "License" means a permission granted by the Department to an adoption agency authorizing the adoption agency to perform adoption services in A.A.C. R21-9-201(B).
  28. "Open adoption" means an adoption in which the adoptive parent and the birth or legal parent agree to share varying degrees of each other's personal information for future contact.
  29. "Out-of-state agency" means any person or entity that is authorized or licensed by a state other than Arizona, or a foreign country, to perform adoption services.
  30. "Placed child" means an adoptable child who has been placed with an adoptive parent, and the adoptive parent has not yet filed a petition to adopt the child.
  31. "Placement supervision period" means the time period from the date of adoption placement until the court enters a final order of adoption, during which the adoptive parent has the rights under A.R.S. § 8-113.
  32. "Reasonable fee" means
    - a. A fee commensurate with:
      - i. The actual cost of providing a specific adoption service or item to a specific individual, or
      - ii. The average cost of a service or item if the adoption entity routinely uses an averaging method to determine the cost of a particular service or item.
    - b. A reasonable fee may include reasonable compensation for officers and employees and a reasonable profit margin above actual or averaged costs.
  33. "Service plan" means a written document of developmentally appropriate pre-placement and post-placement services necessary to facilitate a child's transition to an adoptive home.
  34. "Social study" means the written report described in A.R.S. § 8-112, after a petition for adoption has been filed, where the adoption entity summarizes the results of its investigation, and makes a definite recommendation for or against the proposed adoption and the reasons for that recommendation.
2. The adoptive parent's certification status,
  3. The adoptive parent's availability for adoptive placement, and
  4. The type of child the adoptive parent is open to considering for adoption including:
    - a. Age;
    - b. Sex; or
    - c. Special needs.
- B.** Upon request, the Department shall provide personally identifiable Adoption Registry information to:
1. The court;
  2. An adoption agency, including a private attorney;
  3. Under a court order, a National or Regional Adoption registry and exchange; and
  4. An out-of-state agency.
- C.** Before providing information, the Department shall obtain, from the person requesting the information, the following:
1. The name and affiliation of the person requesting the information;
  2. The reason for the request; and
  3. If the requesting party is other than a court representative, a signed statement acknowledging that the information is confidential and promising not to release the information to anyone except as allowed by A.R.S. §§ 8-120, 8-121, and 8-105.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-303. Department Adoption Services**

- A.** The Department provides the following adoption services for families and children in accordance with the limitations and provisions of A.R.S. Title 8, Chapter 1, Article 1:
1. For families:
    - a. Recruiting adoptive parents;
    - b. Informing persons interested in adopting a child about the adoption process;
    - c. Conducting certification investigations of applicants under A.R.S. § 8-105;
    - d. Preparing certification reports under A.R.S. § 8-105; and
    - e. Submitting the names and profiles of adoptive parents for listing in the Adoption Registry.
  2. For children:
    - a. Accepting adoption consents from birth parents;
    - b. Preparing non-identifying, pre-placement information on adoptive children for adoptive parents, as required in A.R.S. § 8-129;
    - c. Submitting the name and profile of an adoptive child for listing in the Adoption Registry;
    - d. Preparing a child for adoptive placement;
    - e. Matching an adoptable child with an adoptive parent;
    - f. Placing an adoptable child in the home of an adoptive parent;
    - g. Investigating and reporting to the court on the acceptability of an adoptive parent under A.R.S. § 8-105(H);
    - h. Monitoring an adoption placement during the placement supervision period;
    - i. Providing services to a child placed for adoption and the adoptive family to assist with adjustment to the adoption placement;
    - j. Conducting a social study under A.R.S. § 8-112 and preparing a final report to the court determining suitability of placement; and

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-302. Adoption Registry: Information Maintained; Confidentiality**

- A.** The Department shall maintain and keep current the Adoption Registry with the information required under A.R.S. § 8-105. The Adoption Registry shall include the following current information for each child or adoptive parent listed on the Adoption Registry:
1. The child's availability for adoptive placement,

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- k. Assisting an attorney by providing legal documents to enable an adoptive parent to complete the adoption process.
- B. When performing adoption services, the Department shall adhere to the standards established for an adoption agency in 21 A.A.C. 9.
- a. The availability of children with special needs,
- b. The procedures involved in adopting such children, and
- c. The support services and subsidies that may be available to persons adopting such children; and
4. Other measures similar to those described in this Section.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-304. Department Procedures for Processing Certification Applications**

- A. Upon review of a certification application, the Department shall notify the applicant in writing that the application is either complete or incomplete. An application is complete when it contains the information and supporting documentation described in R21-5-404. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application has 30 days from the date of the notice to provide the missing information. If the applicant fails to do so, the Department may close the file. An applicant whose file has been closed and who later wishes to apply for certification may reapply.
- C. Upon review of a complete application, the Department shall decide whether to accept the application, according to the priority schedule listed in R21-5-305, and the availability of the Department's resources. If the Department cannot accept the application, the Department shall return the original application and all supporting documentation to the applicant. The applicant may reapply.
- D. After the Department accepts the completed application, the Department shall provide the applicant written notice of the acceptance. The Department shall complete the certification investigation as specified in R21-5-405 within 90 days of the date of the notice. The Department shall prepare a certification report under R21-5-406.
- E. The Department shall process a renewal application under this Section and R21-5-407.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-305. Department Priorities for Receipt of Services**

The Department shall accept and process certification applications and render adoption services according to the following priority schedule:

1. An applicant for whom the court has ordered the Department to do a certification investigation and report;
2. An applicant seeking to adopt a particular adoptable child with special needs;
3. An applicant wishing to adopt a child with special needs;
4. An applicant considering adopting a child with special needs; and
5. All other applicants.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-306. Department Recruitment Efforts**

The Department shall actively recruit persons to adopt children with special needs by:

1. Publicizing the need for such adoptive parents;
2. Registering adoptable children, as appropriate, with the Adoption Registry or other local, state, regional and national adoption resources;
3. Advising prospective adoptive parents of:

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-307. Fees; Waiver**

- A. The Department shall charge the following fees for performing a:
1. Certification investigation and preparing a certification report, \$1,200; and
  2. Records search for a confidential intermediary, \$50.00.
- B. The Department shall waive the certification fee in subsection (A)(1) if the applicant adopts a child in the custody of the Department.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-308. Termination of Adoption Services**

- A. The Department may terminate services to an applicant or adoptive parent when:
1. The adoption is finalized;
  2. The applicant or adoptive parent requests closure before receiving a child for placement;
  3. The applicant or adoptive parent ceases to be a resident of Arizona before receiving a child for placement;
  4. The court declines to certify the applicant or adoptive parent;
  5. The applicant or adoptive parent refuses to comply with the requirements in A.R.S. Title 8, Chapter 1, Article 1, or this Chapter, Articles 3 and 4;
  6. The applicant fails to submit a completed certification application within 90 days of the date on which the Department sent the person an application form;
  7. The adoptive parent is no longer willing to be an adoptive parent; or
  8. The adoptive parent is no longer certified to adopt.
- B. The Department may terminate adoption services to an adoptive child when:
1. The court issues a final adoption order; or
  2. The court determines that adoption is no longer the most appropriate case plan for the child, and the Department provides alternate services consistent with the child's new case plan.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**ARTICLE 4. ADOPTION ENTITY SERVICES****R21-5-401. Definitions**

The definitions in R21-5-301 apply in this Article.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-402. Recruitment**

- A. When recruiting applicants, an adoption entity shall comply with the requirements of this Section.
- B. The adoption entity shall conduct recruitment efforts pursuant to a written plan, which shall describe:
1. Specific recruitment goals, including:

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- a. The number and composition of adoptive parents the entity will serve; and
- b. The children the entity will accept for placement and any limitations such as:
  - i. Age;
  - ii. Medical special needs;
  - iii. Developmental special needs;
  - iv. Mental health; or behavioral health special needs.
- 2. Methods of recruitment;
- 3. The number and professional qualifications of staff designated to handle recruitment; and
- 4. The means by which the adoption entity shall fund the agency's recruitment efforts.
- C. The adoption entity's recruitment efforts shall be consistent with the personal characteristics of the children the entity has available for adoption and reasonably expects will become available for adoption through the entity.
- D. An adoption entity shall not:
  - 1. Promise to place more children than the adoption entity's prior history shows it can reasonably expect to place;
  - 2. Promise to place a child in less time than the average waiting period demonstrated by the adoption entity's past practice;
  - 3. Promise adoption subsidy prior to the formal approval and receipt of an adoption assistance agreement that meets the requirements of A.R.S. Title 8 Chapter 1 Article 2; or
  - 4. Make any other statements or promises the entity knows or reasonably should know are false, misleading, or inaccurate.
- E. The Department may take an adverse licensing action against an adoption agency that does not comply with this Section.
- B. A person who is already knowledgeable about all or part of the matters listed in subsection (A) may waive orientation on those matters, with the approval of the adoption entity. A person may be knowledgeable due to a prior adoption through an Arizona adoption entity, employment in adoption services, or for other similar reasons.
- C. An adoption entity shall maintain written documentation showing that any person who has applied to the entity for certification or for placement of a child has received the orientation described in subsection (A), required by R21-9-227, or has obtained a waiver described in subsection (B). If some or all of the adoption orientation is waived, the adoption entity shall document the matters waived and the reasons for the waiver.
- D. An adoption entity shall not charge a person for anything other than a certification application fee, or enter into an adoption fee agreement with a person, until the person has received the orientation in subsection (A).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-404. Application for Certification**

An applicant who wishes to become certified as an adoptive parent shall apply for certification as provided in A.R.S. § 8-105. An adoption entity shall require an applicant to provide at least the following information:

- 1. Personally identifying information for each prospective adoptive parent, including:
    - a. Name and date of birth;
    - b. Social Security number;
    - c. Race and ethnicity;
    - d. Physical description;
    - e. Current address and duration of Arizona residency;
    - f. Marital history; and
    - g. The name, address, and phone number of immediate family members, including emancipated adult children;
  - 2. The name, date of birth, and social security number of any person currently residing with the applicant;
  - 3. A listing of the applicant's insurance policies, including:
    - a. Any insurance that may be available to cover the medical expenses of a birth mother or adoptive child; and
    - b. The name of the insured, the insurance policy number, and the effective dates of coverage;
  - 4. A current financial statement describing the applicant's assets, income, debts, and financial obligations;
  - 5. A physician's statement as to the applicant's current physical and mental health;
  - 6. A medical and psychological history on the applicant and the applicant's household members. The history may be a declaration by the applicant of past physical and mental illness for the applicant and any household member;
  - 7. The applicant's employment history;
  - 8. The applicant's social history;
  - 9. A statement from the applicant as to the type of child the applicant seeks to adopt and whether the applicant desires to adopt or would consider adopting a child with special needs;
  - 10. Information on the following legal proceedings in which the applicant has been a party:
    - a. Dependency proceedings,
    - b. Severance or termination of parental rights proceedings,
    - c. Child support enforcement proceedings,
- Historical Note**  
New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).
- R21-5-403. Orientation: Persons Interested in Adoption**
- A. Prior to accepting a certification application from a person considering the adoption of a child, or an application for placement from a person who intends to seek a placement through the adoption entity, an adoption entity shall provide the person with an adoption orientation, which shall explain the following:
    - 1. The adoption process, including all legally mandated procedures, and estimated time-frames for completion of such procedures;
    - 2. The adoption entity's policies and procedures that directly affect services to adoptive parents;
    - 3. The adoption entity's fee structure and written fee agreement;
    - 4. The types and number of children the agency typically has had and reasonably expects to have available for adoption placement and the average length of time between certification and placement;
    - 5. The Department's responsibility for licensing and monitoring agencies, and the public's right to register a complaint about an agency as prescribed in 21 A.A.C. 9, Article 2;
    - 6. The function of the Adoption Registry and the adoptive parent's right to decide whether to be included in the Adoption Registry; and
    - 7. Confidentiality requirements, open adoptions, and the confidential intermediary program described in A.R.S. § 8-134.

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- d. Proceedings involving allegations of child abuse or neglect,
  - e. Adoption proceedings, or
  - f. All criminal proceedings;
  - 11. The applicant's prior history of adoption certification, including prior applications for certification and the dates of any certification denials;
  - 12. Whether the applicant wishes to be listed on the Adoption Registry;
  - 13. A fingerprint card or fingerprints processed through the Court, meeting the requirements of A.R.S. § 41.1758.07 on each applicant and each adult residing in the home more than the age of 18 years; and
  - 14. The names, addresses, and phone numbers of five personal references; two references from family members related to the applicant by blood or marriage, and three other references, who have known the applicant at least two years and who can attest to the applicant's character and fitness to adopt.
- g. Financial statements, tax returns, pay stubs, and W-2 statements;
  - h. Bankruptcy papers;
  - i. Insurance policy information; and
  - j. Documentation showing Arizona residency.
  - B. A person who meets the qualifications listed in 21 A.A.C. 9, Article 2, shall perform the certification investigation and shall document all personal contacts made and all information reviewed and considered during the investigation.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-406. Certification Report and Recommendation**

- A. Upon completion of the certification investigation, the adoption entity shall prepare a certification report under A.R.S. § 8-105.
- B. In determining whether to recommend certification of an applicant, the adoption entity shall consider all factors bearing on fitness to adopt, including, but not limited to:
  - 1. The factors listed in A.R.S. § 8-105;
  - 2. The length and stability of the applicant's marital relationship, if applicable;
  - 3. The applicant's age and health;
  - 4. Past, significant disturbances, or events in the applicant's immediate family, such as:
    - a. Involuntary job separation,
    - b. Divorce, or death of spouse, child, or parent, and
    - c. History of child abuse or neglect;
  - 5. The applicant's ability to financially provide for an adopted child; and
  - 6. The applicant's history of providing financial support to the applicant's other children, including compliance with court-ordered child support obligations.
- C. The certification report shall specifically note any instances where an applicant has:
  - 1. Been charged with, been convicted of, pled no contest to, or is awaiting trial, on charges of an offense listed in A.R.S. § 41-1758.07; or
  - 2. Been a party to a dependency, guardianship, or termination of parental rights action.
- D. If the report recommends denial of certification, the adoption entity shall send the applicant written notice of the unfavorable recommendation, the reason for the denial, and an explanation of the applicant's right under A.R.S. § 8-105, to petition the court for review. The adoption entity shall mail the notice to the applicant at least five work days prior to filing the certification report with the Court.
- E. The adoption entity may notify the adoptive parent of the Court's certification decision if the Court fails to do so.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-407. Renewal of Certification**

- A. A certified adoptive parent who has not filed a petition for adoption within one year of the original certification order, may apply for an extension of certification, as provided in A.R.S. § 8-105.
- B. If the Court directs an adoption entity to investigate a certified adoptive parent who has requested a renewal of certification, the entity shall obtain from the adoptive parent seeking renewal:
  - 1. A copy of the request for renewal of certification;

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2. An updated profile of any changes in the certified adoptive parent's social, family, medical, and financial circumstances;
  3. New fingerprint clearance per Court requirements, following original certification;
  4. A current physical health statement for all members of the adoptive parent's household at least every third year following original certification; and
  5. Other information as the Court may request.
- C. When investigating a request for a renewal of certification, the adoption entity shall, at a minimum, complete the following:
1. Conduct an in person interview at the applicant's home with the applicant and the applicant's other household members more than the age of five years,
  2. Investigate any change in circumstances described in the request for renewal as necessary to determine continuing fitness to adopt, and
  3. Document all actions.
- D. Upon completion of the renewal investigation, the adoption entity shall prepare and file with the Court a certification investigation that shall contain a recommendation for or against renewal of certification.
- E. If the adoption entity recommends that certification not be renewed, the entity shall send the adoptive parent the notice in R21-5-406(D).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-408. Communication with Adoptive Parents Awaiting Placement**

Upon request, an adoption entity shall inform an adoptive parent awaiting placement of a child of the following:

1. The status of the adoptive parent's case;
2. The number of children the adoption entity currently has available for adoption;
3. The number of times the adoptive parent has been considered for the placement of a child;
4. The number of approved adoptive parents awaiting placement of a child through the adoption entity; and
5. The number of placements the adoption entity made in the prior year, the number of placements the adoption entity has made to date in the current year, and the number of placements the adoption entity anticipates making during the remainder of the current year.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-409. Prohibitions Regarding Birth Parents**

An adoption entity shall not:

1. Promise a birth parent that the birth parent shall have future contact with the child or the adoptive parent but may explain the concept of open adoption;
2. Promise a birth parent that the child will be placed with a specific adoptive parent or type of adoptive parent, except in a direct placement adoption. The adoption entity may advise the parent that it will use the entity's best efforts to honor any placement preferences the birth parent may have, to the extent that such preferences are consistent with the best interests of the child;
3. Promise a birth parent any financial or other consideration prohibited by law; or
4. Do or say anything to coerce or pressure a birth parent to sign a consent to adopt.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-410. Information about Birth Parents**

- A. Before accepting a child for placement, the adoption entity shall make a good faith effort to obtain the following information described in this Section from the child's birth parent, or person having custody of the child:
1. Information about each birth parent including:
    - a. Name and any aliases used;
    - b. Address, phone number, and residential history;
    - c. Date and place of birth;
    - d. Social security number;
    - e. Race, citizenship, and any Native American tribal affiliation or membership;
    - f. Physical description;
    - g. Name of current employer and employment history;
    - h. Educational history;
    - i. Marital history and status;
    - j. Record of other births and children born to the birth parent;
    - k. Hobbies;
    - l. Future plans;
    - m. Record of arrests or convictions;
    - n. Medical, psychological, and substance use history;
    - o. For the birth mother, history of prenatal care, gestational substance or drug abuse, pregnancy, and delivery;
    - p. Immediate family relationships; and
    - q. Significant family events.
  2. An explanation of the birth parent's decision to place the child for adoption, the factors that influenced the decision, and a record of any counseling the birth parent received concerning the decision.
  3. A record of the birth parent's contact with the child.
  4. A statement of the birth parent's feelings about future contact with the child.
  5. A list of the birth parent's preferences regarding an adoptive home for the child.
  6. Medical or psychological history on the birth parent's own parents, siblings, grandparents, aunts, uncles, and first cousins.
  7. Information on the child being surrendered for adoption, as appropriate to the age of the child and the child's:
    - a. Developmental history,
    - b. Medical and psychological history,
    - c. Family background,
    - d. Educational history, and
    - e. Membership in or affiliation with any Native American tribe.
  8. A listing of the birth parent's insurance policies, including:
    - a. Any insurance that may be available to cover the medical expenses of the birth mother or adoptive child; and
    - b. The name of the insured, the insurance policy number, and the effective dates of coverage.
- B. The adoption entity shall document all statements and information in a permanent record.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-411. Pre-consent Conference with Birth Parents**

- A. The adoption entity shall have a pre-consent conference with each birth parent who must provide consent to adoption under

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A.R.S. § 8-106, to explain in a language and form that each birth parent can understand the following:

1. The legal and practical consequences of executing a consent, including:
    - a. Applicable ICWA provisions; and
    - b. The fact that the consent, and all other affidavits executed in connection with an adoption, are executed under penalty of perjury;
  2. The irrevocability and inalterability of a consent;
  3. The legal prohibition against paying the birth parent to execute a consent;
  4. The fact that the birth parent has no obligation to sign the consent; and
  5. The provisions of A.R.S. § 8-106, regarding an affidavit of any potential father.
- B.** The pre-consent conference shall occur:
1. No earlier than 12 hours after the birth of a child if the conference was not held before the birth under subsection (B)(2);
  2. No earlier than 60 days before the anticipated due date, if the conference is held before the child's birth;
  3. At least 24 hours before presenting a birth parent with the consent form for signature; and
  4. At a time that takes into account the known medical and emotional condition of each available birth parent.
- C.** The person conducting the pre-consent conference shall provide the birth parent with a sample consent form and shall convey the information described in subsection (A) in a language and form that the birth parent can understand.
- D.** The person conducting the pre-consent conference shall document that the information was given and understood and shall obtain the birth parent's signature on the documentation. If the conference is by telephone under subsection (E), the person may obtain the signature through the mail at a later date. If the conference is not held, the person shall document the reason under subsection (E).
- E.** The pre-consent conference may be by telephone and is not required if the birth parent cannot be located or refuses to participate in the conference. The adoption entity shall document the reason why the conference did not occur.
- F.** If required to obtain a consent from a birth father under A.R.S. § 8-106, the adoption entity shall, prior to obtaining the birth father's signature, advise the birth father of the matters listed in subsection (A) in a form and language the birth father can understand. The adoption entity shall include the advice listed in subsection (A) on the consent form.
2. Potential detriment to the child's social and physical well-being, due to lack of information concerning the unidentified birth parent's social and medical history; and
  3. Potential penalties for perjury.
- D.** When a birth parent knows, but refuses to disclose, the identity or location of the other birth parent, the adoption entity shall advise the birth parent as provided in subsection (C) and shall also explain that the Court may refuse to finalize the adoption.
- E.** The adoption entity shall document all action taken in compliance with this Section.
- F.** The adoption entity shall give the birth parent a copy of the consent and retain a copy in the permanent adoption file.
- G.** The adoption entity shall request a search of the confidential putative fathers registry of information that the Arizona Department of Health Services maintains under A.R.S. § 8-106.01 when:
1. A birth father's identity is unknown or undisclosed, and
  2. The adoption entity believes that a search of the putative fathers registry may prevent disruption of a placement or an adoption.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-413. Adoptable Child: Assessment and Service Plan**

- A.** Prior to selecting an adoptive placement for an adoptable child, the adoption entity shall:
1. Assess the child's medical, psychological, social, and developmental needs;
  2. Design an adoptive family profile consistent with the child's needs and best interests;
  3. Develop a written service plan; and
  4. Assess whether the child is a potential candidate for an adoption subsidy.
- B.** The service plan shall, at a minimum, include:
1. Placing the child on the Adoption Registry if there is no adoptive parent readily available to adopt the child;
  2. Giving the child a developmentally appropriate explanation of the adoption process.
- C.** The adoption entity shall provide the child with services in accordance with the child's service plan.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-414. Placement Determination**

- A.** An adoption entity shall have and follow a written policy for making placement recommendations and decisions in both direct placement and adoption placement adoptions.
- B.** Except as otherwise provided in subsection (C), in an agency placement adoption a team shall make the placement decision. The team shall at a minimum, include:
1. The case manager or person who assessed the adoptable child, and
  2. The case manager or person who is knowledgeable about the potential adoptive parents for the adoptable child.
- C.** In international adoptions, where the case manager or person who assessed the child is out of the country and unavailable, the adoption team shall include the person who is most familiar with the adoptable child's needs.
- D.** In an agency placement adoption, an adoption entity shall place an adoptable child in the adoptive setting that best meets the child's safety, social, emotional, physical and mental health needs. In determining who can best meet the needs, the adoption entity shall consider ICWA placement preferences if

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-412. Consent to Adopt; Unknown Birth Parent**

- A.** A person who obtains a birth parent's signature on a consent shall not do so until the person reasonably determines:
1. That the requirements of R21-5-411 have been met;
  2. That the birth parent is not acting under duress;
  3. That the birth parent is physically and mentally capable of exercising informed consent; and
  4. That the birth parent has revealed all information known about the identity and location of the other birth parent.
- B.** No one shall advise a birth parent to falsely state that he or she does not know the identity or location of the other birth parent.
- C.** When a birth parent professes not to know the identity or location of the other birth parent, the person taking the consent shall explain the risks and consequences of this response, including the following:
1. Potential invalidation of the adoption;

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applicable and the following relevant factors in no order of preference:

1. The marital status, length and stability of the marital relationship of the adoptive parent;
  2. The family's ability to meet the child's emotional, physical, mental, and social needs;
  3. The family's ability to financially provide for the child;
  4. The wishes of a child who is 12 years of age or more;
  5. Family relationships between the child and the adoptive parent's family members;
  6. The placement of the child's siblings;
  7. The availability of relatives, the adoptable child's former foster parents, or other significant persons to provide support to the adoptive parent and child;
  8. The wishes of the child's birth parent; and
  9. All information in the case files of the child and the adoptive parent.
- E.** The adoption entity shall document the placement decision.
1. For adoptions conducted pursuant to the ICPC, the documentation shall comply with the requirements of the ICPC under A.R.S. § 8-548 et seq.
  2. For all other adoptions, the documentation shall include the following:
    - a. The adoptive child's critical needs and characteristics that weigh most heavily in the placement determination,
    - b. The names and general characteristics of those adoptive parents who most closely match the child's needs and who are seriously considered for placement, and
    - c. The reasons why a particular adoptive parent chosen for placement best meets the child's needs.
- F.** For adoptions not covered by the ICPC, the adoption entity may document the placement decision in a file or placement log that is separate from the clients' case files.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-415. Provision of Information on a Placed Child**

After selecting an adoptive placement for a child, and before placing the child with the chosen adoptive parent, the adoption entity shall provide the adoptive parent with all non-identifying information available on the child, including, without limitation, the following:

1. All records concerning the child's medical, psychological, social, legal, family, and educational background;
2. All records concerning the birth parents' medical, psychological, social, legal, family, and educational background;
3. The medical and social background on the child's other immediate family members, including siblings and birth grandparents;
4. The child's plan for adoption services, as described in R21-4-413; and
5. Information on adoption subsidy that may be available for the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-4-416. Transportation**

An adoption entity that transports an adoptive child shall:

1. Ensure that any person who transports an adoptive child is informed of the child's medical needs and is capable of

meeting any medical needs that are reasonably likely to arise during transport;

2. Not leave an adoptive child unattended during transportation if the adoptive child:
  - a. Is less than seven years of age;
  - b. Has a developmental disability; and
  - c. Is more than seven years of age if the adoption entity has determined, and documented in the child's record, that the child is physically and emotionally incapable of traveling alone;
3. Require all persons who provide transport to carry personal identification and a written statement from the adoption entity describing the person's authority and responsibilities while performing transport duties;
4. Require proof of driver's license from any person accepting temporary or permanent responsibility for transporting an adoptive child during the course of placement;
5. Document all transportation plans and actual transportation events in the child's record;
6. All vehicles used in transporting adoptive children shall be insured;
7. Ensure that an adoptive child is properly secured in a child restraint system that meets the requirements listed in R21-9-224(E).

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-417. Placement Services**

- A.** An adoption entity shall make counseling services available to the adoptive parents' family as the entity deems reasonable and necessary to facilitate the child's acceptance into the adoptive parent's family and to preserve stability. The adoption entity may make such services available by advising the adoptive family that such services may be beneficial and referring the adoptive parent and his or her family to community resources and providers.
- B.** The adoption entity shall make information on adoption related educational and supportive resources available to adoptive parents.
- C.** The adoptive parent must sign a document stating if he or she is declining any form of adoption counseling.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-418. Post-placement Supervision: Non-foster Parent Placement**

- A.** When a child is placed for adoption with a person who is not the child's foster parent, a case manager from the adoption entity shall visit the home within 30 calendar days of the date of adoptive placement to:
1. Ensure that the adoptive parent received all available non-identifying information from the adoption entity on the child;
  2. Address any questions or concerns the adoptive parent or child may have about the adoption process or placement;
  3. Ensure that the family has addressed the educational needs of a school-age child; and
  4. Ensure that an adoptive parent who works has made appropriate child care arrangements.
- B.** Following the initial placement visit in subsection (A), a case manager from the adoption entity shall:
1. Visit the adoptive family at least once every three months until the adoption is finalized:

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- a. Except, when the adoptive child is a child with special needs, the visits shall occur at least once a month; and
- b. During the first six months following the initial placement visit, at least alternating visits shall occur at the adoptive family's home;
2. Interview all members of the adoptive family's household during the placement supervision period;
3. Discuss how the child and the adoptive parent's family are adapting, the current relationship among members of the adoptive parent's family, and the following issues with the adoptive parent if appropriate in light of the child's age and development:
  - a. How the presence of the child has changed familial relationships;
  - b. How the child and the extended family view each other;
  - c. The role each family member has assumed regarding child care and discipline;
  - d. How the adoptive parent is coping with the needs and demands of the placed child;
  - e. How the child challenges or tests the placement and how the family reacts to these episodes, including any feelings of insecurity about the propriety of the family members' response;
  - f. How the family perceives the child's sense of identity and the need to fill in gaps in the child's history; and
  - g. How the child has adjusted to the school environment;
4. If developmentally appropriate, privately interview the child about:
  - a. The child's feelings about the adoption;
  - b. How the child and family are adapting; and
  - c. The child's relationships with the members of the family.
- C. The case manager shall document all contacts and communications made under this Section.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-419. Post-placement Supervision: Foster Parent Placement**

- A. When a foster parent plans to adopt a foster child who is age 5 years or older, a case manager from the adoption entity shall privately interview the child and all members of the adoptive family household who are age 5 years or older about their feelings towards the adoption, before the adoption consent is signed.
- B. When a child is placed for adoption with a person who has been a foster parent to the child, a case manager from the adoption entity shall conduct a home visit at least every two months from the time legal consent for adoption has been signed until the finalization of adoption unless the adoptive child is a child with special needs. If the adoptive child is a child with special needs, the case manager shall visit at least once a month.
- C. During the visits described in subsection (B), the case manager shall:
  1. If developmentally appropriate, privately interview the child to discuss a child's feelings about the adoption; and
  2. Interview all members of the adoptive family household, including children, if developmentally appropriate, to discuss, as described in R21-5-418, how the child and family

are adapting, and the current relationship among members of the family.

- D. The case manager shall document all contacts and communications under this Section.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-420. Protracted Placement**

If an adoption is not finalized within two years from the date of consent, and the child is still placed in the adoptive home, the adoption entity handling the adoption shall provide the Department with written documentation explaining the reason why the adoption has not been finalized, no later than 30 calendar days after the two-year period has ended.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-421. Finalizing the Placement**

An adoption entity shall cooperate with the adoptive parent and the attorney, if any, retained by the adoptive parent, to finalize the adoption.

1. The entity shall provide all information and documents needed to finalize the adoption and shall file a final written report to the court at least 14 calendar days before the final adoption hearing, or at such other time as the Court may require. The report shall include the information listed in this subsection, unless the entity has already provided this information in an earlier report, and the information has not changed since the earlier report.
  - a. The name and age of each adoptive parent and the relationship, if any, of each adoptive parent to the child to be adopted;
  - b. The name, age, and birthplace of the child to be adopted, and whether any or all of this information is unknown to the adoptive parent;
  - c. The entity or other source from which the adoptive parent received the child to be adopted;
  - d. The circumstances surrounding the surrender of the child to the entity;
  - e. The results of the entity's evaluation of the child and of the adoptive parent, including:
    - i. A description of the care the child is receiving;
    - ii. The adjustment of the child and parent; and
    - iii. A summary statement of the entity's recommendation to the court regarding finalization;
  - f. A full description of any property belonging to the child to be adopted;
2. For children 12 years of age and older, the adoption entity shall solicit and consider the child's wishes concerning adoption.
3. The adoption entity shall notify the AHCCCS Administration of any potential third party payer, as prescribed in A.R.S. § 36-2946, if the entity has not already done so.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-422. Placement Disruption**

- A. When a placement fails, the adoption entity shall provide services, including counseling to the adoptive parent and his or her family and child, to help them cope with the loss and separation.

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- B. An adoption entity shall have and follow written procedures for an adoptive placement disruption. The procedures shall include:
1. Provision of counseling services to the adoptive parent, his or her family, and the child as needed; and
  2. Provision for placement of the child in another adoptive home or other developmentally appropriate living arrangement.
- C. The adoptive entity shall document the reasons for the disruption and shall take such information into account when making future placements for the adoptive parent and the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-423. Confidentiality**

Any person or entity who participates in an adoption or provides adoption services shall comply with the confidentiality requirements under A.R.S. §§ 8-120, 8-121, and 36-2903.01.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**ARTICLE 5. ADOPTION SUBSIDY****R21-5-501. Definitions**

In addition to the definitions in A.R.S. §§ 8-141 and 8-501, the following definitions apply in this Article.

1. "Adoption agency" means an individual or entity, including a corporation, company, partnership, firm, association, or society, other than the Department, licensed by the Department to place a child for adoption.
2. "Adoption Specialist" means the Department of Child Safety Specialist, or adoption agency staff person, who is responsible for managing the child's case prior to the adoption finalization.
3. "Adoption subsidy" means the same as A.R.S. § 8-141, and includes nonrecurring adoption expenses under A.R.S. § 8-161 et seq. If the child qualifies, the adoption subsidy may include one or more of the following:
  - a. Medical, dental, and mental health subsidy;
  - b. Maintenance subsidy;
  - c. Special services subsidy; and
  - d. Reimbursement of nonrecurring adoption expenses.
4. "Adoption subsidy agreement" means the agreement in A.R.S. § 8-144 concerning the Adoption Subsidy Program and includes the agreement in A.R.S. § 8-162 concerning the nonrecurring adoption expense program.
5. "Adoption Subsidy Program" means a unit within the Department of Child Safety that administers the adoption subsidy.
6. "Adoption Subsidy Supervisor" means a Department employee who is responsible for the Adoption Subsidy Program within a defined geographic area, and that the Department has authorized to approve an adoption subsidy agreement.
7. "Adoptive parent" means an adult who the court has certified or approved to adopt a child, or an adult who has adopted a child.
8. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the state's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes, A.R.S. Title 36, Chapter 29.
9. "AHCCCS hospital reimbursement system" means the payment structure that AHCCCS uses to pay for inpatient and outpatient hospital services.
10. "Complete adoption subsidy application" means a packet containing the following:
  - a. An "Adoptive Family Subsidy Application" form provided by the Department that the adoptive parent, the Adoption Specialist, and Adoption Specialist supervisor have completed and signed; and
  - b. The supporting documentation and information requested in the "Adoptive Family Subsidy Application."
11. "Debilitating" means a lifelong, progressive, or fatal condition characterized by physical, mental, or developmental impairment that impedes an individual's ability to function independently.
12. "Department" or "DCS" means the Arizona Department of Child Safety.
13. "Developmental disability" means the same as A.R.S. § 8-141.
14. "Diagnose" means to identify a physical, psychological, social, learning, or developmental condition or disability according to the accepted standards of the medical, mental health, or educational professions.
15. "Emergency situation" means a circumstance that, if unaddressed, would be detrimental to a child's life, health, or safety.
16. "Emotional disturbance" means the same as A.R.S. § 8-141.
17. "Lawfully present in the United States" means the child is a U.S. citizen, national, or an alien authorized by an appropriate federal entity or court to be present in the United States.
18. "Legally free" means the parental rights of a child's birth or legal parents have been terminated.
19. "Maintenance subsidy" means a monthly payment paid to a custodial adoptive parent to assist with the costs directly related to meeting some of the adopted child's needs, including child care, health insurance co-payments and deductibles, and supplemental educational services for the adopted child.
20. "Mental disability" means the same as A.R.S. § 8-141.
21. "Nonrecurring adoption expenses" means the same as A.R.S. § 8-161, and are reasonable and necessary expenses directly related to the legal process of adopting a child with special needs. Allowable expenses include adoption fees, court costs, attorney's fees, fingerprinting fees, home study fees, costs for physical and psychological examinations, costs for placement supervision, and travel expenses necessary to complete the adoption.
22. "Physical disability" means the same as A.R.S. § 8-141.
23. "Qualified professional" means a practitioner licensed or certified by the state of Arizona or another state to evaluate and diagnose a condition or disability, or provide medical, dental, mental health services, or approved by the Department to provide educational or respite services.
24. "Sibling relationship" means two or more brothers or sisters who are related by blood or by law, and who are being adopted by the same family.
25. "Special allowance" means funds provided for clothing or personal expenses, therapeutic or personal attendant care, and other specialized payments such as emergency clothing, education, and gift allowances.
26. "Special needs" means one or more of the following conditions which existed before the finalization of adoption:
  - a. Physical, mental or developmental disability.
  - b. Emotional disturbance.
  - c. High risk of physical or mental disease.
  - d. High risk of developmental disability.

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- e. Age of six or more years at the time of application for an adoption subsidy.
  - f. Sibling relationship.
  - g. Racial or ethnic factors.
  - h. High risk of severe emotional disturbance if removed from the care of his foster parents.
  - i. *Any combination of the special needs described in this paragraph.* A.R.S. § 8-141.
27. "Special services subsidy" means financial assistance for extraordinary, infrequent, or uncommon needs related to a special needs condition specified in the adoption subsidy agreement.
  28. "Standard of care" means a medical or psychological procedure or process that is accepted as treatment for a specific illness, injury, medical, dental, learning, or psychological condition through custom, peer review, or consensus by the professional medical, dental, educational, or mental health community.
  29. "Title IV-E" means section 473 of Title IV of the Social Security Act, 42 U.S.C. 673, which establishes the federal adoption assistance program.
  30. "Title XIX" means Medicaid, as defined by Section 1900, Title XIX, of the Social Security Act, 42 U.S.C. 1396.
  31. "Title XX" means the Social Services Block Grant, as defined by Section 2001, Title XX, of the Social Security Act, 42 U.S.C. 1397.
  32. "Undiagnosed pre-existing special need condition" means a physical, mental or developmental disability or emotional disturbance that existed before a court finalized the child's adoption, and that a qualified professional did not confirm before the child's adoption.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-502. Eligibility Criteria**

- A. The Department shall determine if a child qualifies for the Title IV-E adoption assistance program prior to determining whether the child qualifies for the Adoption Subsidy Program.
- B. A child shall qualify for Title IV-E adoption assistance if the child meets the additional eligibility criteria required in 42 U.S.C. 673(a)(2). If the child does not meet the additional criteria in Title IV-E, the child may still be eligible to receive adoption subsidy under subsection (C).
- C. An Arizona child shall be eligible for adoption subsidy when the child is:
  1. In the care, custody, and control of the Department, or an adoption agency licensed in Arizona, or was previously adopted and received Title IV-E or Arizona adoption subsidy;
  2. Legally free for adoption;
  3. Lawfully present in the United States; and
  4. Determined to be a child with special needs as defined by Title IV-E of the Social Security Act, and A.R.S. Title 8, Chapter 1, Articles 2 and 3 as follows:
    - a. The child cannot or should not be returned to the parent's home;
    - b. The child cannot be placed with adoptive parents without an adoption subsidy due to a special need of the child; and
    - c. A reasonable but unsuccessful effort was made to place the child without an adoption subsidy, unless the Department determined that it was not in the child's best interest to place the child with another family because of the child's significant emotional

ties with the prospective adoptive parent while in their care as a foster child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-503. Application for Adoption Subsidy**

- A. The adoptive parent shall submit a complete adoption subsidy application to the Department Adoption Subsidy Program prior to the finalization of the adoption. A complete adoption subsidy application shall include the following:
  1. The child's:
    - a. Name;
    - b. Date of birth;
    - c. Social Security Number; and
    - d. Ethnicity;
  2. The adoptive parents':
    - a. Name;
    - b. Date of birth;
    - c. Social Security Number;
    - d. Ethnicity;
    - e. Marital status;
    - f. Occupation;
    - g. Relationship to the child;
    - h. Adoption certification status;
  3. Information about:
    - a. The child's special needs;
    - b. Whether the child is lawfully present in the U.S.;
    - c. The Department or the adoption agency that has custody of the child;
    - d. Whether the child is free for adoption;
    - e. Efforts to place the child for adoption without adoption subsidy;
    - f. Resources for which the child is eligible; and
    - g. Financial benefits for which the child is eligible; and
  4. Description of:
    - a. The child's pre-existing special need conditions;
    - b. The need for maintenance payments; and
    - c. Nonrecurring expenses.
  5. The adoptive parent shall include the following documentation:
    - a. The child's specific special need identified by a qualified professional;
    - b. The child's need for a maintenance subsidy from:
      - i. The adoptive parent,
      - ii. Adoption Specialist, and
      - iii. A qualified professional;
    - c. The child's lawful presence in the United States if the child is not a U.S. citizen;
    - d. The child's pre-existing medical, dental, and mental health conditions as documented by a qualified professional:
      - i. Current within one year, or
      - ii. Provided in birth records; and
  6. Assurances that the following information is available in the adoption case record:
    - a. The Department or adoption agency that has custody of the child,
    - b. That the child is free for adoption, and
    - c. Efforts to place the child for adoption without adoption subsidy.
- B. An adoption subsidy application is complete when the Adoption Subsidy Program receives the application and all supporting documentation. Documentation may vary according to the conditions of the child, and may include the recommendations of qualified professionals.

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**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-504. Eligibility Determination**

The Department shall review the adoption subsidy application and determine eligibility according to the following:

1. The Department shall approve eligibility for adoption subsidy if a child meets the eligibility criteria listed in R21-5-502 and the adoptive parent submits a complete application. If the Department approves eligibility, the Department shall create an adoption subsidy agreement that the adoptive parent and the Adoption Subsidy Supervisor or designee shall sign before the court enters the final order of adoption.
2. The Department shall deny eligibility for an adoption subsidy if a child does not meet the eligibility criteria listed in R21-5-502. If the Department denies an adoption subsidy, the Department shall send a notice to the adoptive parent that explains the reason for denial, the applicant's right to appeal, and the time-frame to file an appeal.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-505. Adoption Subsidy Agreement**

- A. The Department shall create an adoption subsidy agreement that lists the scope and nature of the subsidies provided, including:
  1. The child's documented pre-existing special needs condition,
  2. The types of subsidy approved,
  3. The amount or rates as applicable to the types of subsidy approved, and
  4. The specific terms and conditions of the agreement.
- B. The adoption subsidy agreement shall become effective if the following occurs prior to the finalization of the adoption:
  1. The adoptive parent signs the agreement and returns it to the Department Adoption Subsidy Program, and
  2. The Adoption Subsidy Supervisor or designee signs the agreement.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-506. Medical, Dental, and Mental Health Subsidy**

Adoption subsidy provides medical, dental, and mental health subsidies in the form of federal Medicaid coverage to a child in the Adoption Subsidy Program.

1. If the child resides in Arizona, AHCCCS determines eligibility; or
2. If the child resides in another state, the relevant state agency in that state determines Medicaid eligibility.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-507. Maintenance Subsidy**

- A. The maintenance subsidy may not cover all the daily living expenses of the adopted child. The Department and the adoptive parent shall negotiate the amount of maintenance subsidy based on a child's current special needs and the family's circumstances.
  1. Under A.R.S. § 8-144(B), the amount of the maintenance subsidy shall not exceed the payments allowable for foster care, not including foster care special allowances.

2. The Department shall deduct private or public monetary benefits, such as benefits received through Title II of the Social Security Act, paid to the child from the monthly maintenance subsidy, as allowed under state or federal law. The adoptive parent shall report the receipt of any private or public monetary benefits for the child to the Adoption Subsidy Program as soon as the benefits are received.

**B. Payment of Maintenance Subsidy**

1. The Department shall not begin maintenance subsidy payments prior to the effective date of the adoption subsidy agreement.
2. The Department shall issue maintenance subsidy payments monthly to the adoptive parent as specified in the adoption subsidy agreement.

**C. Renegotiation of the Maintenance Rate**

1. The Department or the adoptive parent may initiate a change in the maintenance subsidy rate if there are changes in the child's needs.
2. The Department may renegotiate the amount of the adoption subsidy; however, the rate shall not exceed the payments allowable for foster care, not including foster care special allowances.
3. The adoptive parent shall provide the Department with documentation supporting the requested change in the maintenance subsidy rate.
4. If the child is in the care or custody of a state agency in Arizona or any other state, an adoption agency, or an individual other than the adoptive parent, the Department shall request, and the adoptive parent shall provide, documentation that the adoptive parent continues to be legally and financially responsible for the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-508. Special Services Subsidy**

- A. Special services subsidy shall be:
  1. Related to a special needs condition listed in the adoption subsidy agreement; and
  2. Necessary to improve or maintain the adopted child's functioning as documented by an appropriate qualified professional. The Adoption Subsidy Program shall review the documentation at least annually.
- B. Services approved for the payment of special services subsidy shall be:
  1. Provided by a qualified professional;
  2. Provided in the least restrictive environment and as close as possible to the adoptive parent's residence;
  3. In accordance with the "Standard of Care"; and
  4. Not otherwise covered by or provided through maintenance subsidy, medical subsidy, dental subsidy, mental health subsidy, or other resources for which the adopted child is eligible.
- C. The adoptive parent shall submit the special services request to the Adoption Subsidy Program and receive approval from the Adoption Subsidy Program prior to the adoptive parent's incurring the specified expense. The request shall include:
  1. Documentation from a qualified professional that the service is necessary; and
  2. Documentation that the adoptive parent had requested the service and the service provider had denied the request or documentation that the service is not available from other potential funding sources, such as AHCCCS/Medicaid, private insurance, school district, or other community resources.

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- D.** Special services subsidy shall not include:
1. Payment for services to meet needs other than the pre-existing special needs conditions specifically listed in the adoption subsidy agreement;
  2. Payment for medical or dental services usually considered to be routine, such as well-child checkups, immunizations, and other services not related to the child's special needs conditions in the adoption subsidy agreement;
  3. Payment for health-related services that are not medically necessary, as determined by a qualified professional;
  4. Payment for social or recreational services such as routine child care, dance lessons, sports fees, camps, and similar services; and
  5. Payment for educational services that are not necessary to meet the special needs conditions specifically listed in the adoption subsidy agreement, or the services for which the school district is responsible.
- E.** The Department may request an independent review by a qualified professional of a special services request to determine the necessity for medical, dental, psychological, or psychiatric testing or services, or to evaluate the appropriateness of the treatment plan or placement.
- F.** The Department may issue reimbursements to the adoptive parent for approved special services, or the Department may pay the service provider directly.
- G.** Special services subsidy reimbursement is limited as follows:
1. The Department shall reimburse in-state and out-of-state inpatient and outpatient hospital services according to the AHCCCS hospital reimbursement system, as required by A.R.S. § 8-142.01(A), if the adoptive parent has obtained prior approval for the service from the Department. Prior approval is not required in an emergency situation.
  2. The Department shall not reimburse special services subsidy amounts in excess of the rates allowed by the Department or AHCCCS. The Department shall use the lowest applicable rates as established by AHCCCS, the Department's Comprehensive Medical and Dental Program (CMDP), or rates established by the Adoption Subsidy Program to be customary and reasonable.
  3. The Department shall not pay for requests that the adoptive parent or provider submits more than nine months after the date of service for which the adoptive parent or provider requests payment.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-509. Nonrecurring Adoption Expenses**

- A.** Nonrecurring adoption expenses shall not cover expenses related to visiting and placing the child.
- B.** Reimbursement of nonrecurring adoption expenses is subject to the limitations in A.R.S. § 8-164.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-510. Annual Review; Reporting Change**

- A.** Each year, the Department shall send a review form to the adoptive parent requesting that the adoptive parent provide:
1. Information indicating that the parent remains legally and financially responsible for the child;
  2. Information on any change in benefits for the child, such as benefits received through Title II of the Social Security Act;

3. Information on any change in circumstances, including changes in residence, marital status, educational status, or other similar changes; and
  4. A description of any changes in the child's special needs conditions that are listed in the adoption subsidy agreement.
- B.** The adoptive parent shall provide the Department with the requested information within 30 days of the adoptive parent's receipt of the review form.
- C.** The adoptive parent shall notify the Department in writing within five calendar days when any of the following occurs:
1. The adoptive parent is no longer legally responsible for the child;
  2. The adoptive parent is no longer providing support to the child;
  3. The child is no longer residing in the adoptive parent's home;
  4. The child has graduated from high school or obtained a general equivalency degree (GED);
  5. The child has married;
  6. The child has joined the military; or
  7. The child dies.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-511. Termination of Adoption Subsidy**

The Department shall terminate an adoption subsidy when any of the following occurs:

1. The child turns 18 years old and is not enrolled in and attending high school or a program leading to a high school diploma or general equivalency degree (GED);
2. The child is aged 18 through 21 years, has been continuously enrolled in school, and either drops out of school, graduates from high school, or obtains a general equivalency degree (GED);
3. The child turns 22 years old;
4. The adoptive parent is no longer legally responsible for the child;
5. The adoptive parent is no longer providing support to the child;
6. The child marries;
7. The child joins the military;
8. The special needs conditions of the child no longer exist;
9. The child dies;
10. The adoptive single parent or both adoptive parents die; or
11. The adoptive parent requests termination.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-512. New or Amended Adoption Subsidy Agreement**

An adoptive parent may apply for a new or amended adoption subsidy agreement after the adoption is final, only upon documentation of an undiagnosed pre-existing special needs condition that existed before the finalization of the adoption.

1. The adoptive parent shall send the Department a written request for adoption subsidy with documentation from a qualified professional diagnosing the special needs condition and confirming that it existed before the final order of adoption.
2. The adoptive parent and the Department shall follow the procedures in this Article for processing applications and determining eligibility.

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3. If the Department finds that the child has an undiagnosed pre-existing special needs condition that, if diagnosed prior to the adoption, would have met the eligibility criteria listed in R21-5-502, the Department shall grant a new subsidy or amend the adoption subsidy agreement to cover this special needs condition.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-513. Appeals**

Appeals for the Adoption Subsidy Program shall follow the process in 21 A.A.C. 1, Article 3.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-514. Confidentiality**

The Department shall maintain the confidentiality of all information used in the Adoption Subsidy Program according to all applicable federal and state laws.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
  - (a) Cross-jurisdictional placements pursuant to section 8-548.
  - (b) Providing the cost of care of:
    - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
    - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any

purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-105. Preadoption certification; investigation; central adoption registry

A. Before any prospective adoptive parent may petition to adopt a child the person shall be certified by the court as acceptable to adopt children. A certificate shall be issued only after an investigation conducted by an officer of the court, by an agency, by the department or by an entity contracted by the department to do an investigation and home study for foster home licensing or preadoption certification. A written application for certification shall be made directly to the court, to an agency, to the department or to an entity contracted by the department, in the form and content required by the court, agency or department.

B. The department is not required to accept every application for certification. In determining which applications to accept the department may give priority to applications filed by adult residents of this state who wish to adopt a child who has any special needs as defined in section 8-141.

C. After receiving and accepting the written and completed application of the prospective adoptive parent or parents, which shall include a financial statement and a physician's or a registered nurse practitioner's statement of each applicant's physical health, the department, the agency, an officer of the court or the entity contracted by the department shall conduct or cause to be conducted an investigation of the prospective adoptive parent or parents to determine if they are fit and proper persons to adopt children.

D. The department shall not present for certification a prospective adoptive parent unless that person and each other adult member of the household have a valid fingerprint clearance card issued pursuant to section 41-1758.07. The prospective adoptive parent and each other adult member of the household must certify on forms that are provided by the department and that are notarized whether that person is awaiting trial on or has ever been convicted of any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction.

E. An officer of the court may obtain 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.

F. This investigation and report to the court shall consider all relevant and material facts

dealing with the prospective adoptive parents' fitness to adopt children and shall include:

1. A complete social history.
2. The financial condition of the applicant.
3. The moral fitness of the applicant.
4. The religious background of the applicant.
5. The physical and mental health condition of the applicants.
6. Any court action for or adjudication of child abuse, abandonment of children, dependency or termination of parent-child relationship in which the applicant had control, care or custody of the child who was the subject of the action.
7. Whether the person or persons wish to be placed on the central registry established in subsection M of this section.
8. All other facts bearing on the issue of the fitness of the prospective adoptive parents that the court, agency or department may deem relevant.

G. The investigator shall not reveal to the prospective adoptive parents the identity of a child or the child's parent or parents and shall not reveal to the child or the child's parent or parents the identity of the prospective adoptive parents if these facts are not already known.

H. Within ninety days after the original application prescribed by subsection A of this section has been accepted, the department, the agency or the entity contracted by the department or a person or agency designated by the court to conduct an investigation shall present to the juvenile court the written report required by subsection F of this section, which shall include a definite recommendation for certifying the applicant as being acceptable or nonacceptable to adopt children and the reasons for the recommendation.

I. Within sixty days after receiving the investigation report required by subsections F and H of this section, the court shall certify the applicant as being acceptable or nonacceptable to adopt children based on the investigation report and recommendations of the report. A certification remains in effect for eighteen months from the date of its issuance and may be extended for additional one year periods if after review the court finds that there have been no material changes in circumstances that would adversely affect the acceptability of the applicant to adopt.

J. The court may require additional investigation if it finds that additional information is necessary on which to make an appropriate decision regarding certification.

K. Any applicant who has been certified as nonacceptable may petition the court to review that certification. Notice shall be given to all interested parties and notice may be

given to the foster care review board if the child sought to be adopted is in out-of-home placement and is a dependent child or the subject of a dependency action. The matter shall be heard by the court, which may affirm or reverse the certification.

L. If the applicant is certified as nonacceptable, the applicant may not reapply for certification to the court, to any agency, to the department or to an entity contracted by the department for one year.

M. The department shall maintain a central adoption registry that includes the names of all prospective adoptive parents currently certified by the court as acceptable to adopt children, except those who request that their names not be included, the names of all children who are under the jurisdiction of the department and who are currently available for adoption, the names of any other children who are currently available for adoption and whose names are voluntarily entered in the registry by any agency, parent or other person that has the right to give consent to the child's adoption, and other information as the department may elect to include in aid of adoptive placements. Access to information in the registry shall be made available on request to any agency under assurances as the department may require that the information sought is in furtherance of adoptive placements and that confidentiality of the information is preserved.

N. This section does not apply if:

1. The prospective adoptive parent is the spouse of the birth or legal parent of the child to be adopted or is an uncle, aunt, adult sibling, grandparent or great-grandparent of the child of the whole or half-blood or by marriage or adoption.
2. The birth or legal parent is deceased but at the time of death the parent had legal and physical custody of the child to be adopted and the child had resided primarily with the spouse of the birth or legal parent during the twenty-four months before the death of the parent.
3. The grandparent, great-grandparent, uncle, aunt, great-uncle, great-aunt or adult sibling is deceased but at the time of death that person had legal and physical custody of the child to be adopted and the child had resided primarily with the spouse of the grandparent, great-grandparent, uncle, aunt, great-uncle, great-aunt or adult sibling during the twenty-four months before the death of the grandparent, great-grandparent, uncle, aunt, great-uncle, great-aunt or adult sibling.
4. The applicant is a licensed foster parent who is petitioning to adopt a child currently placed by the department in the foster parent's home and the department recommends the adoption of the child by the foster parent applicant.

O. If the applicant is not a licensed foster parent and has adopted a child within three years preceding the current application and is applying to adopt another child, the department, the agency or an entity contracted by the department or a person designated by the court to conduct an investigation shall only provide an update report on any changes in circumstances that have occurred since the previous certification. If the

applicant has adopted a child more than three years before the current application and is applying to adopt another child, the department, the agency or an entity contracted by the department or a person designated by the court to conduct an investigation may provide an updated report on any changes in circumstances that have occurred since the previous certification. The court shall certify the applicant as acceptable to adopt unless there are changes in circumstances that adversely affect the applicant's parenting ability. In making this determination, the court shall consider information from the prior certification.

#### 8-112. Social studies; requirements

A. The division, an agency or an officer of the court shall conduct and submit a social study to the court ten days before the hearing on the petition to adopt. Notwithstanding any other provisions of this section, the court may order an additional social study or waive the social study if it determines that this is in the child's best interests because of special circumstances.

B. Except as provided in subsection D or E of this section, the social study shall include the following:

1. The social history, heritage and mental and physical condition of the child and the child's birth parents.
2. The child's current placement in the prospective adoptive parent's home and the child's adjustment to that home.
3. The prospective adoptive parent's suitability to adopt.
4. The existing and proposed arrangements regarding the child's custody.
5. Any financial arrangement concerning the proposed adoption made by the birth parents, the division, an agency, an attorney or the prospective adoptive parents.
6. A state and federal criminal records check of the prospective adoptive parent and each adult who is living permanently with the prospective adoptive parent except a birth or legal parent with custody of the child. A valid fingerprint clearance card that is issued pursuant to section 41-1758.07 satisfies this requirement. The court may order an additional state and federal criminal records check for good cause.
7. A central registry records check, including any history of child welfare referrals, with the division of the prospective adoptive parent and each adult who is living permanently with the prospective adoptive parent.
8. Any other information that is pertinent to the adoption proceedings.

C. The social study conducted pursuant to subsection A of this section is part of the case file and shall contain a definite recommendation for or against the proposed adoption and

the reasons for that recommendation.

D. The social study conducted pursuant to subsection A of this section shall consist only of the results of the state and federal criminal records check and the central registry records check conducted pursuant to subsection B of this section if either of the following is true:

1. The prospective adoptive parent is the child's stepparent who has been legally married to the child's birth or legal parent for at least one year and the child has resided with the stepparent and parent for at least six months.
2. The prospective adoptive parent is the child's adult sibling, by the whole or half blood, or the child's aunt, uncle, grandparent or great-grandparent and the child has resided with the prospective adoptive parent for at least six months.

E. If the child being considered for adoption has resided with the prospective adoptive parent for at least six months and the prospective adoptive parent either has adopted a child or was appointed the permanent guardian of the child within three years preceding the current application, or is a foster parent who is licensed by this state, the social study conducted pursuant to subsection A of this section may consist only of the following:

1. The results of the central registry records check conducted pursuant to subsection B of this section.
2. A review of any material changes in circumstances that have occurred since the previous adoption, permanent guardianship or license renewal that affect the prospective adoptive parent's ability to adopt the child or for the child to be placed in the prospective adoptive parent's home.

F. The department shall complete any required social study within six months after receiving a completed application to adopt a child if all of the following apply to the child:

1. The child is free for adoption and is at least sixteen years of age.
2. The department has placed the child with a prospective adoptive parent.
3. The child consents to the adoption.

#### 8-120. Records; inspection; exception; destruction or transfer of certain records

A. Except as provided in section 8-129, all files, records, reports and other papers compiled under this article, whether filed in or in possession of the court, an agency or any person or association, shall be withheld from public inspection.

B. Such files, records, reports and other papers may be open to inspection by persons and agencies having a legitimate interest in the case and their attorneys and by other persons

and agencies having a legitimate interest in the protection, welfare or treatment of the child if so ordered by the court.

C. This section does not prohibit persons employed by the court, the division or an agency from conducting the investigations or performing other duties pursuant to this article within the normal course of their employment.

D. This section does not prohibit persons employed by the court, the division, an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 or an agency from providing partial or complete identifying information between a birth parent and adoptive parent when the parties mutually agree to share specific identifying information and make a written request to the court, the division or the agency.

E. Except for files that belong to an attorney, all files, records, reports and other papers not filed in or in the possession of the court shall not be destroyed until after a ninety-nine year period. The files that belong to an attorney shall not be destroyed until after a seven-year period.

F. If an adoption agency ceases operations, the adoption agency shall do all of the following:

1. Transfer the documents described in subsection A of this section to the division or to another adoption agency in this state if the documents concern a matter that is closed.
2. Transfer the documents described in subsection A of this section to another adoption agency in this state if the documents concern a matter that is open.
3. Notify the division of the transfer of any documents to another adoption agency in this state pursuant to this subsection.
4. Notify all adoptive parents whose files it is transferring pursuant to this subsection of the transfer.

#### 8-121. Confidentiality of information; exceptions

A. It is unlawful, except for purposes for which files and records or social records or parts thereof or information therefrom have been released pursuant to subsection C of this section or section 8-120, 8-129 or 8-134, or except for purposes permitted by order of the court, for any person to disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of, any information involved in any proceeding under this article directly or indirectly derived from the files, records, reports or other papers compiled pursuant to this article, or acquired in the course of the performance of official duties until one hundred years after the date of the order issued pursuant to section 8-116. After one hundred years has elapsed from the date of the order issued pursuant to section 8-116 the court shall transfer all files, records, reports and other documents in possession of the court relating to the adoption to the Arizona state library,

archives and public records. The items transferred pursuant to this subsection shall be available for public inspection during business hours and may be made available in an alternative format.

B. The provisions of this section shall not be construed to prohibit persons employed by the court, the division or an agency from conducting the investigations or performing other duties pursuant to this article within the normal course of their employment.

C. This section does not prohibit persons employed by the court, the division, an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 or an agency from providing partial or complete identifying information between a birth parent and adoptive parent when the parties mutually agree to share specific identifying information and make a written request to the court, the division or the agency.

D. A person may petition the court to obtain information relating to an adoption in the possession of the court, the division or any agency or attorney involved in the adoption. Nonidentifying information may be released by the court pursuant to section 8-129. The court shall not release identifying information unless the person requesting the information has established a compelling need for disclosure of the information or consent has been obtained pursuant to subsection E of this section or from the birth parent pursuant to section 8-106. If a compelling need for disclosure of information is established, the court may decide what information, if any, should be disclosed and to whom and under what conditions disclosure may be made.

E. An adoptee who is eighteen years of age or older or a birth parent may file at any time with the court and the agency, division or attorney who participated in the adoption a notarized statement granting consent, withholding consent or withdrawing a consent previously given for the release of confidential information. If an adoptee who is eighteen years of age or older and the birth mother or birth father have filed a notarized statement granting consent to the release of confidential information, the court may disclose information, except identifying information relating to a birth parent who did not grant written consent, to the adoptee or birth parent.

F. This section does not prohibit a person from notifying a birth parent of the death of a child that the birth parent has placed for adoption.

#### 8-130. Consent to licensed agency or division; attorneys; affidavits

A. A consent to adoption of a child shall not be granted to an agency unless the agency is licensed to place children for adoption under this article. A consent may be granted to the division, which is exempt from licensure. An agency or the division may conduct both agency placement adoptions and direct placement adoptions. An agency placement adoption shall only be made by an agency or the division.

B. Except as provided in subsection C, a person shall not do any of the following unless

the person is employed or engaged by and acting on behalf of a licensed adoption agency:

1. Solicit or accept employment or engagement, for compensation, by or on behalf of a parent or guardian for assistance in the placement of a child for adoption.
2. Solicit or accept employment or engagement, for compensation, by or on behalf of any person to locate or obtain a child for adoption.

C. An attorney licensed to practice law in this state may assist and participate in direct placement adoptions and may receive compensation to the extent the court finds reasonable under section 8-114 if the person granting consent to the adoption has made a choice of the specific adopting parent without prior involvement of the attorney or if the choice is made only from among persons currently certified by the court as acceptable to adopt children pursuant to section 8-105.

D. Before a petition to adopt is granted and as a condition of the entry of an order of adoption:

1. An attorney participating or assisting in a direct placement adoption shall file with the court an affidavit confirming that there has been, to the best of his knowledge and belief, compliance with subsection B of this section and with section 8-114, subsection B, section 8-129 and, if fictitious names have been used, section 8-107, subsection E.
2. An attorney representing petitioners in an agency placement adoption and the agency shall file with the court an affidavit confirming that there has been, to the best of the petitioner's, agency's and attorney's knowledge and belief, compliance with subsections A and B of this section and sections 8-114 and 8-129.

### 8-171. Definitions

In this article, unless the context otherwise requires:

1. "Adoption assistance" means payments, medical assistance or benefits provided by an adoption assistance state pursuant to applicable federal and state laws.
2. "Adoption assistance state" means a state that is a signatory to an interstate adoption assistance compact.
3. "State" means a state, district, commonwealth or territory of the United States.

### 8-172. Interstate compacts; requirements; optional contents

The department may enter into a compact with other states to provide for the reciprocal enforcement of adoption assistance agreements. A compact entered into pursuant to this section shall contain the following:

1. A provision making it available for joinder by all states.
2. A provision or provisions for withdrawal from the compact on written notice to the parties no sooner than one year from the date of the notice.
3. A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and are applicable to all children and their adoptive parents who on the effective date of the state's withdrawal from the compact are receiving adoption assistance from a party state other than the one in which they are residents and have their principal place of abode.
4. A requirement that each instance of adoption assistance to which the compact applies is covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state that provides the adoption assistance and that this agreement is expressly for the benefit of the adopted child and is enforceable by the adoptive parents and the state agency providing the adoption assistance.
5. Other provisions necessary to implement the compact.

8-173. Adoption assistance agreements; reciprocity conditions; violation; classification

A. A child who resides in this state and who is the subject of an adoption assistance agreement with a state that has entered into a compact with this state is entitled to receive medical assistance from this state if the adoption assistance agreement provides categorical eligibility for federally funded medical assistance. This entitlement begins on the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with department rules, the adoptive parents shall show at least annually that the agreement with the other adoption assistance state is still in force or has been renewed.

B. The department and the Arizona health care cost containment system administration shall consider the holder of an adoption assistance agreement, as provided in subsection A of this section, as any other eligible medical assistance person under the laws of this state and shall make medical assistance payments pursuant to the same conditions and procedures for other recipients of medical assistance.

C. A person who knowingly submits a claim for payment or reimbursement for services or benefits pursuant to this section or who makes a statement in connection with a claim that is false, misleading or fraudulent is guilty of a class 6 felony.

**ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION**

Title 7, Chapter 3, Article 1, Rulemaking and Article 2, Adjudications



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 8, 2020

**SUBJECT:** Arizona Commission for Postsecondary Education  
Title 7, Chapter 3, Articles 1 & 2

---

This Five-Year-Review Report from the Commission of Postsecondary Educations relates to rules in Title 7, Chapter 3, Article 1 regarding rulemakings.

The Department did not propose a course of action in the last 5YRR of these rules.

### **Proposed Action**

The Department did not review Article 2, with the intention that the rules expire. The Department is not proposing to make any changes to the rules.

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

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department has determined that the economic impact of Article 1 is minimal. The rule is designed to provide Arizona postsecondary institutions with an efficient,

inexpensive process to propose and adopt rules that impact all educational sectors. There are no apparent alternative methods of rulemaking that are less intrusive or less costly.

The stakeholders include The Commission, Postsecondary Education Institutions, and the 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 Commission has determined that rule imposes the least burden and costs to persons regulated.

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

No, the Commission indicates they did not receive any written criticisms on these rules.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Department indicates the rules are overall clear, concise, understandable, effective, and consistent with other rules and statutes.

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

Yes, the Commission indicates the rules are enforced as written.

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

Not applicable, there is no corresponding federal law.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules were adopted before July 29, 2010.

**9. Conclusion**

As mentioned above, the Commission is not proposing to make any changes to the rules. The rules are clear, concise, and understandable. Council staff recommends approval of this report.





## Arizona Commission for Postsecondary Education

2020 North Central, Suite 650

Phoenix, Arizona 85004-4503

Tel: (602) 542-7230 | Fax: (602) 258-2483

Email: [acpe@azhighered.gov](mailto:acpe@azhighered.gov) | Website: <https://highered.az.gov>

March 30, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Chair

Governor's Regulatory Review Council

100 N. 15<sup>th</sup> Ave., Suite 305

Phoenix, Arizona 85007

Re: Five-Year-Review Report on Title 7, Chapter 3, Articles 1 and 2

Dear Ms. Sornsins:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Commission for Postsecondary Education ("Commission") submits the attached Five-Year-Review Report on A.A.C. Title 7, Chapter 3, Article 1, to the Governor's Regulatory Review Council. This Report is timely filed pursuant to the Council's letter, dated December 23, 2019.

The Commission did not review A.A.C. Title 7, Chapter 3, Article 2 with the intention that this rule expire under A.R.S. § 41-1056(J).

This document complies with the reporting requirement in A.R.S. § 41-1056. A.R.S. § 15-1852 exempts the Commission from Title 41, Chapter 6 which encompasses A.R.S. § 41-1091.

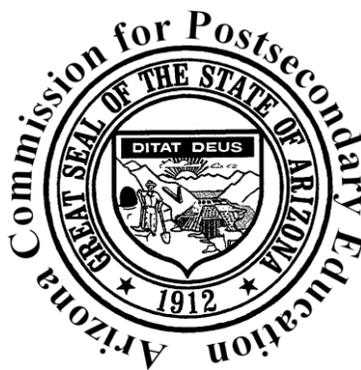
If you need any further information, please contact me at (602) 542-7230 or [aosborn@azhighered.gov](mailto:aosborn@azhighered.gov).

Respectfully Submitted,

A handwritten signature in cursive script that reads "April L. Osborn".

Dr. April L. Osborn, Executive Director

Enclosures



**FIVE-YEAR-REVIEW REPORT  
TITLE 7. EDUCATION  
CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION  
ARTICLE 1. RULEMAKING  
March 2020**

**ARIZONA COMMISSION FOR  
POSTSECONDARY EDUCATION**

*...expanding access and increasing success  
in postsecondary education for Arizonans*

**FIVE-YEAR-REVIEW REPORT  
TITLE 7. EDUCATION**

**CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION  
ARTICLE 1. RULEMAKING**

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**FIVE-YEAR-REVIEW SUMMARY ARTICLE 1**  
**Rulemaking**

Arizona Revised Statutes (A.R.S.) § 15-1852(A)(2) requires the Arizona Commission for Postsecondary Education (Commission) to adopt rules to carry out the purpose of Chapter 14, Article 5, Commission for Postsecondary Education. A.R.S. § 15-1852(C) indicates the Commission is exempt from A.R.S. Title 41, Chapter 6 but shall adopt rules in a manner substantially similar to A.R.S. Title 41, Chapter 6. The Commission has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 7, Chapter 3. The rules specifying the rulemaking process for the Commission are in A.A.C. Title 7, Chapter 3, Article 1.

The rules in A.A.C. Title 7, Chapter 3, Article 1 cover the general provisions; incorporation by reference; Commission rulemaking reference; notice of oral proceedings; economic, small business, and consumer impact summary; effective date of rules; variance between adopted rule and published notice of proposed rule adoption; and oral proceedings. Rules R7-3-101 through R7-3-108 were adopted August 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act.

Through an analysis of the rules in Article 1, the Commission has determined the rules are effective, enforced as written, consistent with state and federal statutes and rules, and are clear, concise, and understandable. The Commission does not anticipate revising this Article anytime in the near future.

## **INFORMATION THAT IS IDENTICAL FOR ALL RULES UNDER ARTICLE 1**

1. **Authorization of the rule by existing statutes**

A.R.S. § 15-1851 and § 15-1852

3. **Effectiveness in achieving the objective**

The rule is effective in achieving its objective.

4. **Consistency with state and federal statutes and rules**

The rule is consistent with state and federal statutes and rules.

5. **Enforcement policy**

The rule describes processes and definitions regarding the Commission's rulemaking process, so enforcement by the Commission is not applicable.

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

7. **Written criticisms of the rules received within the last five years**

The Commission staff has not received one written criticism of this rule in the last five years.

8. **Estimated economic, small business, and consumer impact**

The economic, small business, and consumer impact of the rule is minimal. The rule is designed to provide Arizona postsecondary institutions with an efficient, inexpensive process to propose and adopt rules that impact all educational sectors. Rulemaking procedures are designed to minimize any paperwork burdens on the three constituencies. Yet each is provided an opportunity to comment upon rules in a public setting prior to their adoption. Because the proposed Commission rulemaking process parallels that of other state agencies, there are no unusual or unanticipated impacts that would be unique to the Commission process nor do there appear to be any effects on state revenues. Any negative impacts are not likely to arise in the rulemaking process itself, but rather with individual rules approved under the process that could have negative impacts. There are no apparent alternative methods of rulemaking that are less intrusive or less costly.

9. **Business competitiveness analysis**

The Commission did not receive a business competitiveness analysis of the rules in the last five years.

10. **Completion of previous five-year-review report process**

In the last five-year-review report there were no proposed actions for this Article.

11. **Costs vs. benefits/least burden**

The rule imposes the least burden and costs to persons regulated.

12. **Stringency compared to federal law**

The rules are not related to federal law. The Commission has adopted rules in a manner substantially similar to A.R.S. Title 41, Chapter 6.

13. **General permit compliance, A.R.S. § 41-1037**

Of the rules reviewed, none were adopted or amended after July 29, 2010.

14. **Proposed course of action**

No course of action necessary for the rules reviewed. No revisions to these rules are being made.

**INFORMATION FOR INDIVIDUAL RULES UNDER ARTICLE 1**

**R7-3-101. General Provisions**

2. **Objective of the rule**

The objective of the rule is to define terms used in Article 1 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation. Additionally, the objective of the rule incorporates a system for numbering, form, and style as prescribed by the Secretary of State which allows the uniform system to be consistent with other rules.

**R7-3-102. Incorporation by Reference**

2. **Objective of the rule**

The objective of the rule is to identify a process that allows the Commission to include a second document of any kind within another document by only mentioning the second document. This then makes the second document a part of the main document.

**R7-3-103. Commission Rulemaking Reference**

2. **Objective of the rule**

The objective of the rule is to maintain an official rulemaking record for each rule. Additionally, this objective identifies what should be contained in the record so the public may inspect the record.

**R7-3-104. Notice of Oral Proceedings**

2. **Objective of the rule**

The objective of this rule is to notify the public of oral proceedings regarding a proposed action on a rule. The notice includes the date, time, place, and nature of the oral proceeding.

## **R7-3-105. Economic, Small Business, and Consumer Impact Summary**

### **2. Objective of the rule**

The objective of the rule is to prepare an economic, small business, and consumer impact summary. The summary provides an analysis of the probable costs and benefits, the impact on employment, the impact on small business, the effect of state revenues, and a description of less costly alternatives.

## **R7-3-106. Effective Date of Rules**

### **2. Objective of the rule**

The objective of the rule is to identify a process in which a rule becomes effective.

## **R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption**

### **2. Objective of the rule**

The objective of the rule is to propose a process in which the rule will be reviewed again if there are substantial changes between the adopted rule and the published notice. This allows the public another opportunity to comment on changes.

## **R7-3-108. Oral Proceedings**

### **2. Objective of the rule**

The objective of the rule outlines procedures for an oral proceeding and allows for the consistent interpretation of the procedures.

**TITLE 7. EDUCATION****CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION**

(Authority A.R.S. § 15-1852 et seq.)

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (01-4).**Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to A.R.S. § 15-1852(C). Exemption from A.R.S. Title 41, Chapter 6 means the Commission was not required to hold public hearings; and the Governor's Regulatory Review Council did not review or approve the rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.***ARTICLE 1. RULEMAKING***Article 1, consisting of Sections R7-3-101 through R7-3-108, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-101.	General Provisions
R7-3-102.	Incorporation by Reference
R7-3-103.	Commission Rulemaking Reference
R7-3-104.	Notice of Oral Proceedings
R7-3-105.	Economic, Small Business, and Consumer Impact Summary
R7-3-106.	Effective Date of Rules
R7-3-107.	Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption
R7-3-108.	Oral Proceedings

**ARTICLE 2. ADJUDICATIONS***Article 2, consisting of Sections R7-3-201 through R7-3-205, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-201.	Definitions
R7-3-202.	Contested Cases, Notice, Hearing, Records
R7-3-203.	Decisions and Orders
R7-3-204.	Hearings and Evidence
R7-3-205.	Rehearing and Decisions

**ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM***Article 3, consisting of Sections R7-3-301 through R7-3-309, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-301.	Federal LEAP Requirements
R7-3-302.	Institutional Eligibility Requirements
R7-3-303.	Receipt and Allocation of Arizona LEAP Program Funds
R7-3-304.	Arizona LEAP Student Eligibility Requirements
R7-3-305.	Arizona LEAP Award Procedures
R7-3-306.	Award Alteration
R7-3-307.	Administrative Costs
R7-3-308.	Institutional Program Review
R7-3-309.	Definitions

**ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM***Article 4, consisting of Sections R7-3-401 through R7-3-404, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-401.	Purpose
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R7-3-402.	Definitions
R7-3-403.	Administration and Allocation of Funds
R7-3-404.	Student Eligibility
R7-3-405.	Termination of Award

**ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM***Article 1, consisting of Sections R7-3-501 through R7-3-505, adopted effective October 31, 1997, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 97-4).*

## Section

R7-3-501.	Definitions
R7-3-502.	Fees
R7-3-503.	RFP Process
R7-3-504.	Changing Designated Beneficiary
R7-3-505.	Account Balance Limitations
R7-3-506.	Withdrawals; Reporting of Non-qualified Withdrawals; Penalties
R7-3-507.	Oversight of Financial Institutions
R7-3-508.	IRS Regulations, Rulings, Notices, and Other Guidance

**ARTICLE 1. RULEMAKING****R7-3-101. General Provisions**

- A.** Definitions. In this Article, unless the context otherwise requires:
1. "Agenda item" means a specified matter listed on an agenda included as part of the public notice of a Commission meeting pursuant to A.R.S. § 38-431.02.
  2. "Commission" means the Commission for Postsecondary Education.
  3. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
  4. "Public meeting" means a meeting held under and subject to the Open Meeting Act, A.R.S. §§ 38-431 through 38-431.09.
  5. "Rule" means a statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. Rule includes the amendment or repeal of a prior rule, but does not include intra-agency memoranda.
  6. "Rulemaking" means the process for formulation and adoption of a rule.
- B.** The Commission shall follow the uniform system for numbering, form and style as prescribed by the Secretary of State in the *Arizona Administrative Code*.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-102. Incorporation by Reference**

The Commission may incorporate by reference in its rules and without publishing the incorporated matter in full all or any part of a code, standard, rule, or regulation that is adopted by an agency of the United States or this state, or a nationally recognized organization or association, if incorporation of its text in Commission rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rules shall fully identify the incorporated matter by location, date, and shall state that the rule does not include any later amendments or editions of the incorporated matter. The Commission shall file three copies of the incorporated matter with the Secretary of State at the time the adopted rule is filed.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-103. Commission Rulemaking Record**

The Commission shall maintain an official rulemaking record for each rule proposed. The record and matter incorporated by reference shall be available for public inspection. The Commission rulemaking record shall contain all of the following:

1. Reference to the specific authority under which the rule is proposed to be adopted, amended, or repealed;
2. The name and address of Commission personnel with whom persons may communicate regarding the rule;
3. An informative summary of the proposed rule;
4. The time during which written submissions may be made and the time and place where oral comments may be made;
5. The current status of the proposed rule;
6. Any known timetable for Commission decisions or other action for the rulemaking;
7. A copy of all publications in the *Arizona Administrative Register* or a newspaper of general circulation with respect to the proposed action;
8. All written petitions, requests, submissions, and comments received by the Commission and all other written materials considered or prepared by the Commission in connection with the proposed action;
9. The official minutes of all oral proceedings regarding the rule;
10. A copy of the economic, small business, and consumer impact summary and the minutes of any public meeting at which the rule was considered by the Commission;
11. A statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule;
12. A copy of the final rule, including the date of its adoption and the date of its filing and publication.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-104. Notice of Oral Proceedings**

The Commission or its staff shall request that the Secretary of State publish in the *Arizona Administrative Register* notice of an oral proceeding concerning proposed action by the Commission regarding a rule. The notice shall include a statement of the date, time, place, and nature of the proceedings, and the name and address of Commission personnel with whom persons may communicate regarding the rule. If the Secretary of State declines to publish such information, the Commission or its staff shall cause the information to be published in a newspaper of general circulation. If an oral proceeding regarding a rule is scheduled, the Commission shall allow at

least 30 days to elapse after the publication date of the notice before adopting, amending, or repealing the rule.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-105. Economic, Small Business, and Consumer Impact Summary**

The Commission shall cause to be prepared an economic, small business, and consumer impact summary. The economic, small business, and consumer impact summary shall be a brief summary of the following information:

1. An identification of the proposed rulemaking;
2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking;
3. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking;
4. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking;
5. A statement of the probable impact of the proposed rulemaking on small business;
6. A statement of the probable effect on state revenues;
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-106. Effective Date of Rules**

A rule adopted by the Commission becomes effective when a certified original and two copies of the rule are delivered to the Office of the Secretary of State unless a later date is required by the constitution of Arizona, statute, or court order, or as specified in the rule.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption**

- A. If, as a result of public comment or internal review, the Commission determines that a proposed rule requires substantial change pursuant to subsection (B), the Commission shall issue a supplemental notice containing the changes in the proposed rule, in accordance with R7-3-104. The Commission shall provide for additional public comment pursuant to R7-3-108.
- B. In determining whether a rule which the Commission intends to adopt is substantially different from the rule as originally proposed by the Commission, the following shall be considered:
  1. The extent to which the subject matter of the proposed rule or the issues determined by that rule are different from the subject matter or issues involved in the rule which the Commission intends to adopt,
  2. The extent to which the effects of the proposed rule differ from the effects of the rule which the Commission intends to adopt,

3. The extent to which all persons affected by the rule which the Commission intends to adopt should have understood that the proposed rule would affect their interests.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-108. Oral Proceedings**

- A.** When the Commission proposes a rule, such proposed action shall be presented as a specifically identified agenda item for review at a public meeting of the Commission, and such public meeting shall take place no less than 30 days prior to the public meeting at which the Commission intends to adopt, amend, or repeal the rule. At the time it proposes a rule, the Commission may schedule an oral proceeding on the proposed action. Any person may submit written statements, arguments, and supporting data on the Commission's proposed action to the Executive Director of the Commission within 30 days following the date the Commission proposes the rule.
- B.** The Commission shall schedule an oral proceeding on a proposed rule if, within 30 days after proposing the rule, a written request for an oral proceeding is submitted to the Commission by no fewer than five persons. An oral proceeding may not be held earlier than 30 days after notice of its date, location, and time is published. If an oral proceeding is scheduled, the Commission shall post, in a location as required for notice of a public meeting, a written notice of the place and date of the proceeding no less than 20 days in advance thereof. The Commission, a member of the Commission, or an official of the Commission's staff designated by the Commission, shall preside at the oral proceeding. At the oral proceeding, minutes of the meeting shall be taken and persons may present oral argument, views, and supporting data on the proposed rule. The person presiding at the hearing shall exclude unduly repetitious argument.
- C.** Prior to its meeting at which it intends to adopt, amend, or repeal a rule, the Commission shall be provided with a copy of the proposed action; an informative summary of such action; a memorandum summarizing the written public comment received; the economic, small business, and consumer impact summary; and the minutes of any oral proceeding regarding the proposed action. The Commission shall consider all such information prior to adopting, amending, or repealing the rule.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**ARTICLE 2. ADJUDICATIONS**

**R7-3-201. Definitions**

In this Article, unless the context otherwise requires:

1. "Commission" means the Commission for Postsecondary Education, including the state postsecondary review entity, acting in accordance with responsibilities as prescribed by A.R.S. § 15-1851(A).
2. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the Commission after an opportunity for hearing.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-202. Contested Cases, Notice, Hearing, Records**

- A.** In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.
- B.** The notice shall include:
1. A statement of the time, place, and nature of the hearing;
  2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
  3. A reference to the particular Sections of the statutes and rules involved.
  4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.
- C.** Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.
- D.** The record in a contested case shall include:
1. All pleadings, motions, and interlocutory rulings;
  2. Evidence received or considered;
  3. A statement of matters officially noticed;
  4. Objections and offers of proof and rulings thereon;
  5. Proposed findings and exceptions;
  6. Any decision, opinion, or report by the officer presiding at the hearing;
  7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the Commission in connection with their consideration of the case.
- E.** A hearing before a hearing officer or the Commission in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Commission.
- F.** Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-203. Decisions and Orders**

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-204. Hearings and Evidence**

- A.** A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. A party to such

proceedings shall have the right to be represented by counsel, to submit evidence in open hearing, and shall have the right of cross examination. Hearings may be held in any place determined by the Commission or its hearing officer.

- B. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
- C. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the Commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

#### Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

#### R7-3-205. Rehearing of Decisions

- A. A party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission not later than 20 days after receipt of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- B. A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:
  1. Irregularity in the administrative proceedings of the Commission or its hearing officer, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Commission or its hearing officer or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
  7. That the decision is not justified by the evidence or is contrary to the law.
- C. The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (B). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- D. Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either

case, the order granting such a rehearing or review shall specify the grounds therefor.

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

#### Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

### ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

#### R7-3-301. Federal LEAP Requirements

The federal government requires that a state LEAP Program must:

1. Be administered by a single state agency in accordance with the Federal-State Agreement under Section 1203 of the Higher Education Act, as amended. The Governor of Arizona has designated as the responsible single state agency the Arizona Commission for Postsecondary Education, which hereafter shall be referred to as the Commission;
2. Award grants only to students who meet the eligibility and financial need requirements as outlined in R7-3-304(A) and (B);
3. Provide grants which do not exceed \$5,000 per program year for a full-time student enrolled in an eligible program at a participating postsecondary institution;
4. Use as state matching funds an amount which is over and above the amount the state expended for grants in the initial program year of FY 1974;
5. Provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of the accounting for federal funds paid to the state;
6. Provide for making such reports, in such form and containing such information, as may be reasonably necessary to enable the U.S. Secretary of Education to perform program analysis;
7. Provide for the payment of the state matching fund share of grants awarded from direct state appropriated funds;
8. Provide that no payment may be made to a student under this program unless the student meets the requirements specified in R7-3-304;
9. Obey all other United States laws and regulations applying to the Federal-State Student Grant Program;
10. Provide that all institutions of higher education in Arizona which meet the eligibility requirements of R7-3-302 shall be eligible to participate in the program;
11. Provide that state expenditures shall not be less than:
  - a. The average annual aggregate expenditures for the preceding three years; or
  - b. The average annual expenditure per full-time equivalent student for those years.
12. Provides assurances that all LEAP grants will be awarded without regard to sex, race, debilitating condition, creed, or economic background.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-302. Institutional Eligibility Requirements**

To participate in the Arizona LEAP Program, an Arizona postsecondary educational institution must either:

1. Be a public or other nonprofit institution of higher education which:
  - a. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
  - b. Is legally authorized by the state of Arizona to provide an educational program beyond secondary education;
  - c. Provides an educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or at least a two-year program which is acceptable for full credit toward a baccalaureate degree; or at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; or at least a six-month training program at a postsecondary vocational institution (such as a public community college) which leads to a certificate or degree and prepares students for gainful employment;
  - d. Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or is an institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.
  - e. Has a certified Eligibility Letter and a valid written Program Participation Agreement from the Department of Education cited in 34 CFR 668.
2. Be a proprietary institution of postsecondary education which:
  - a. Is not a public or other nonprofit institution;
  - b. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
  - c. Is legally authorized to provide postsecondary education in the state of Arizona;
  - d. Provides at least a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
  - e. Is accredited by a nationally recognized accrediting agency or association; and
  - f. Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.
  - g. Refer to this subsection (1)(e).

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds**

- A. Receipt of funds.
  1. The Commission may receive funds for the Arizona LEAP Program from the following sources:
    - a. The federal government;
    - b. The Arizona Legislature;
    - c. Institutions which are eligible to participate in the program; and,
    - d. Other nonfederal institutions, organizations, or individuals.
  2. All funds received will be deposited by the Commission in a properly secured account and appropriate controls will be instituted to assure that accountability will be maintained for all funds received.
  3. Available federal program funds will be matched, on a dollar-for-dollar basis, by state appropriated funds.
  4. Funds provided by the eligible participating institutions and nonfederal funds from other institutions, organizations, or individuals shall be used by the Commission to supplement the federal and state program funds for grants and for necessary administrative costs.
- B. Allocation of funds.
  1. Arizona LEAP Program Funds will be allocated to eligible Arizona postsecondary educational institutions according to their proportionate share of the State's total headcount of Arizona resident students enrolled in eligible programs. The Commission will survey each eligible institution in Arizona no later than May of each year to determine the number of eligible Arizona resident students who are enrolled. Headcount will be determined in the following manner:
    - a. Semester or quarter hour schedule institutions will provide data for the preceding fall semester. (For example, allocations for the LEAP program for any given academic year will be based on enrollment data from the previous academic year.)
    - b. Institutions which operate on clock hour or other nontraditional schedules will provide unduplicated student enrollment data for the period from August through April of the previous year. (For example, allocations for the LEAP program for any given year will be based on data for the period August through April.) Enrollment data must be verified by two Administrative Officials of the school.
  2. The staff will promptly notify each eligible institution of its preliminary allocation as soon as necessary Commission approvals can be obtained. The total will show the amount of federal and state dollars and also the amount the institution must provide to receive the full allocation. The institution will be asked to select one of the following choices:
    - a. It will provide the full amount of institutional funds in order to receive the full allocation.
    - b. It will provide the full amount of institutional funds and also is prepared to provide additional institutional funds if additional federal and state funds should become available. The institution will be asked to specify the amount of additional institutional funds it will be able to provide.

- c. It prefers to provide a lesser amount which will be noted in the space provided. In this case the federal and state amounts will be adjusted to meet the reduced institutional amount.
  - d. It chooses not to participate in the LEAP program for this period. In this case it is important that the institution return the form to the Commission to inform them of this choice.
3. A response due date will be included in this notification. Only institutions whose response is received by the Commission by that due date will be eligible to participate in the LEAP Program for that academic year.
  4. All institution responses which are received by the Commission on or before the response due date will determine the final list of institutions eligible to participate in the LEAP program. If all institutions elect to participate, the preliminary allocation will become the final allocation list. However, if some institutions choose not to participate, or if some prefer to participate at a reduced level, the staff will calculate a new final allocation list considering only the institutions on the final institutional eligibility list. The staff will then notify each participant institution of its revised allocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
  5. The Commission will maintain the necessary accounts for each eligible institution which participates in the Arizona LEAP Program. Each account will, as a minimum, show the current status of that account for its source of program funds, and such other information that the Commission deems necessary.
- C.** Transfer of institutional funds. When the institution receives its final allocation notice from the Commission, it shall send its institutional funds to the Commission. This transfer shall take place beginning July 1 of each year. Checks conveying institutional funds shall be made out to the Arizona Commission for Postsecondary Education -- LEAP Program.
- D.** Disbursement of Arizona LEAP Program Funds to Participating Institutions. The Commission will disburse funds from the Arizona LEAP Program Fund to participating institutions for further disbursement to approved student applicants in accordance with the program calendar.
- E.** Reallocation of Unused LEAP Program Funds
1. Schools will be contacted in February, and asked if they will be able to use all their funds or if they wish additional funding and the amount thereof.
  2. Schools not awarding 100% of their funds by the middle of February may have the remaining LEAP funds recovered by the Commission for reallocation. Remaining institutional funds, less administrative funds, will then be returned to each of those schools when the final program financial report has been received by the Commission.
  3. In March, a reallocation of funds will take place and funds will be available for those schools that asked for additional funds in February.
    - a. If the amount of available funds exceeds the total amount of requests, all requests will be honored. Any remaining available funds will be retained by the Commission for later reallocation.
    - b. If the amount of the requests exceeds the amount of available funds, the Commission will allocate those funds among the requesting institutions based on each institution's proportionate share of Arizona resident students eligible headcount for that institution. The enrollment at non-requesting institutions will not be included in these calculations.
  4. The staff will notify each participant institution of its share of the reallocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
  5. Any LEAP funds retained by the institutions, minus the institutional proportionate share originally paid, must be returned to the Commission in the form of a check by the end of July, along with the signed Financial Report. Any unused program funds remaining in the state treasury will be returned to the institutions in the same proportionate share as was paid in at the beginning of the program year. The Commission may impose a deduction in the amount of those unutilized program funds from a school's following years allocation.
- Historical Note**
- Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).
- R7-3-304. Arizona LEAP Student Eligibility Requirements**
- A.** Student eligibility requirements. To be eligible for a grant from the Arizona LEAP Program, a student must:
1. Be a resident of the State of Arizona as defined by the A.R.S. §§ 15-1802, 15-1803, 15-1804, and 15-1805;
  2. Be enrolled or accepted for enrollment on at least a half-time basis as defined in R7-3-309(A)(20) in an eligible course or program at an Arizona postsecondary educational institution which has met the institutional eligibility requirements in R7-3-302, and which has been approved by the Commission.
  3. At the discretion of the institution financial aid officer, this may include a person who has attained a baccalaureate or first professional degree and has re-entered an eligible Arizona postsecondary institution for retraining in a program below the baccalaureate level. Such a person will be considered an undergraduate student for LEAP purposes.
  4. Have a substantial demonstrated financial need determined in accordance with the provision given in R7-3-304(B);
  5. Maintain satisfactory progress in a course of study as defined by the institution and not be in default or owe a repayment on a federal grant or loan. Refer to 34 CFR 692.
- B.** Financial Need Determination Procedures. The financial need of eligible students will be determined annually, or more often if need be, by the financial aid officer of the institution the student is attending, or will attend, using the Federal Methodology (FM) system of need analysis approved by the Commission and the U.S. Department of Education. A student must be considered to have substantial need.
- C.** A student is considered to have substantial financial need when:
1. The student has an expected family contribution of \$2,140 or less as a result of the student's FM need analysis for the program year; or,
  2. The difference between the student's cost of education and the student's expected family contribution is at least \$100.
- Historical Note**
- Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt

rulemaking at 5 A.A.R. 2046, effective June 1, 1999  
(Supp. 99-2).

**R7-3-305. Arizona LEAP Award Procedures**

- A.** Eligible students who wish to apply for a LEAP award will provide to the financial aid office the information needed for the financial need analysis as specified in R7-3-304(B).
- B.** The financial aid office will:
1. Determine whether or not the student meets the eligibility requirements for an Arizona LEAP award as outlined in R7-3-304(A);
  2. Determine the financial need of the student using the need analysis specified in R7-3-309(B);
  3. Exercise due diligence in determining that the student:
    - a. Satisfies verification procedures which may be required for federal Title IV financial aid programs;
    - b. Satisfies requirements listed under 34 CFR 692.4.
  4. Recommending the amount of the LEAP award in accordance with the following guidelines:
    - a. Awards may be made only to students who meet the criteria of R7-3-304(A);
    - b. The total of all LEAP awards to a student may not exceed \$2,500 for the program year;
    - c. The financial aid officer will determine, based on student need, an award of no more than \$2,500 nor less than \$100 (round all awards to the nearest \$1.00).
    - d. The financial aid officer must ensure that all applications are received in a timely fashion so disbursement of funds to students will be made before a semester or training period ends.
    - e. Sign the application form.
  5. Send the application form to:  
Arizona Commission For Postsecondary Education  
2020 North Central Avenue, Suite 275  
Phoenix, Arizona 85004-4503  
(Attention: Financial Aid Director)
  6. Receive approved applications, assure that LEAP award funds are disbursed to the student, and retain on file disbursement records (signed receipts, canceled checks, etc.) which verify that the student received the funds. No disbursement may be made to a student who, as a result of a change in status, no longer meets the eligibility requirements outlined in R7-3-304.
  7. Maintain adequate fiscal control, accounting, and financial aid records at the institution in accordance with approved state and federal procedures.
  8. Provide to the Commission such financial and other information as may be required to meet federal reporting and auditing requirements.
- C.** The Arizona Commission for Postsecondary Education will:
1. Receive the application for the Arizona LEAP award;
  2. Verify that the student is eligible and that there are sufficient funds in the LEAP program account to fund the award;
  3. Approve applications which meet these criteria;
  4. Return applications that do not meet the criteria or are in any way incomplete to the financial aid office;
  5. Disburse funds to the institution's financial aid officer for the approved applications.

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-306. Award Alterations**

- A.** The Commission will attempt to accommodate any changes which institutional financial aid officers wish to make in individual student awards. These changes might include, for example, cancellation of award, reduction in award level, or increase in award level.
1. Increased LEAP Awards: A student's LEAP award may be increased if the earlier award for that program year is less than the maximum amount specified, and if the student is eligible for such an increase. To increase a LEAP award, the institutional financial aid officer will simply submit to the Commission another LEAP application form, and provide updated financial aid information on the form. In no case may a student receive more than a total of \$2,500 in LEAP awards for a program year.
  2. Reversions: A student's LEAP award may be reduced or canceled. If a student officially or unofficially withdraws or is expelled from the institution, or if the student drops below the minimum number of hours, the institution financial aid officer must attempt to recover all of LEAP award funds possible in accordance with the repayment policies of that institution.
  3. The reversion procedure includes the following steps:
    - a. Funds are recovered from the student;
    - b. The financial aid officer completes the LEAP Reversion Form;
    - c. The financial aid officer forwards the completed LEAP Reversion Form(s) and the Transmittal Form to the Commission.
  4. Reverted LEAP funds recovered by the Commission are redeposited in the secured LEAP program account and credited to the institution's LEAP Program Fund account. Such funds are then available to the institution to be used to make new LEAP awards.

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-307. Administrative Costs**

No federal LEAP funds may be used to administer the Arizona LEAP Program. Therefore, administrative expenses will be paid from nonfederal state appropriated or institutional program funds provided such payment does not reduce state appropriated matching funds necessary to receive the maximum federal LEAP funds.

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-308. Arizona LEAP Institutional Review**

Commission staff members will review Institutional LEAP Program records for each program year, and each institution participating in the LEAP program will be visited at least once every two years. The purpose of the visit is to review, with institution financial aid and fiscal officers, the LEAP student records which state and federal regulations require be kept. Those records include documentation which verifies that:

1. The student is a resident of the state of Arizona as prescribed by Arizona Revised Statutes.
2. The student is currently enrolled at least half-time in an eligible course or program.

3. The student has a demonstrated need for financial assistance as determined by a Federal Methodology needs analysis system approved by the Commission and the U.S. Department of Education.
4. The student has received the LEAP funds approved for the award (for example, a canceled check, a written receipt, a signed roster, etc.).
5. The institutional financial aid officer must assure that the total amount of financial aid awarded to a student, from all sources, added to the amount of the family contribution, is limited by and does not exceed the student's total cost of education. The LEAP award limits and the treatment of any additional funds which were received after the institutional aid awards were made shall be consistent with the federal regulations which govern the Federal Title IV, Campus-based programs.
6. Repayments and refunds of LEAP disbursements which have been made to students shall be made in accordance with the written policies of the institution. These written policies must be consistent with applicable federal regulations and a copy must be filed at the Commission office at the beginning of each LEAP program year.
7. Verify that the institution has a Certified Letter of Eligibility and a valid Program Participation Agreement from the Department of Education cited in 34 CFR 668.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

#### R7-3-309. Definitions

The following definitions are taken from the Federal Regulations which govern the LEAP program and apply to this Plan as well.

1. "Academic year" means a period of time, usually eight to nine months, during which a full-time student would normally be expected to complete the equivalent of two semesters (24 semester hours), two trimesters (24 trimester hours), three quarters (36 quarter hours), or 900 clock hours of instruction.
2. "Act" means the Higher Education Act of 1998, as amended, of Title IV.
3. "Board" means the Arizona Board of Regents.
4. "CFR" means the Code of Federal Regulations.
5. "Clock hour" means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.
6. "Commission" means the Commission for Postsecondary Education.
7. "Cost of education" means the cost of attending an institution as defined by the institution.
8. "Dependent student" is a student who does not qualify as an Independent Student.
9. "Eligible course or program" is one which is properly approved by an accrediting agency recognized by the U.S. Department of Education as being an integral part of the curriculum of the institution, is of postsecondary level, and is at least one semester in length at a college or university, or six months in length, or a minimum of 600 clock hours at a proprietary institution.
10. "Expected family contribution of a dependent student" means the sum of amounts which reasonably may be expected from the student to meet the student's costs of education and the amount which reasonably may be expected to be made available to the student by the student's parents for such purpose. Amount is calculated based upon the Federal methodology need analysis for current program year.
11. "Expected Family Contribution of an Independent Student" means the amount which reasonably may be expected from the student or their spouse, or both, to meet the student's cost of education. Amount is calculated based upon the Federal methodology need analysis for current program year.
12. "Federal methodology" means the methodology now mandated by federal regulation for determining financial need for federally funded programs.
13. "Full-time undergraduate student" means a student who has not attained the baccalaureate or first professional degree and who is carrying a full-time academic work load, other than by correspondence, measured in terms of:
  - a. Course work or other required activities as determined by the institution in which the student is enrolled, or by the state whose agency is administering the program authorized by the Act, which amounts to the equivalent for institutions utilizing trimester, semester, or quarter hour systems, or which consists of a program requiring a minimum of 24 clock hours per week in a program of at least six months or 600 clock hours for those institutions that do not utilize such systems.
  - b. The tuition and fees customarily charged for full-time study by the institution.
14. "Full-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of nine semester, trimester, or quarter hours during a normal length term or five hours during a summer session.
15. "Independent" means an independent student as defined by federal regulations.
16. "Program funds" means the awards; reversions (reverted/retained); and un-utilized Funds:
  - a. Awards: Awarded LEAP Funds are dollars given in the form of grants to eligible students attending eligible postsecondary institutions.
  - b. Reversions:
    - i. Reverted LEAP funds are funds that have been awarded and because student is no longer eligible are returned to the Commission for re-use at a later date.
    - ii. Reverted Retained LEAP funds are those funds that institutions have kept and not transferred back to the Commission after the student who has been awarded is considered ineligible for LEAP award.
  - c. Un-utilized: Un-utilized LEAP Program Funds are those Funds that have never been awarded to a student by an eligible institution.
17. "Public or private nonprofit institution of higher education" means an educational institution which:
  - a. Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.
  - b. Is legally authorized to provide a program of education beyond secondary education.
  - c. Provides an educational program for which it awards an associate, baccalaureate, or professional degree

- or at least a two-year program which is acceptable for full credit towards a baccalaureate degree, or at least a six-month vocational program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.
- d. Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,
    - i. Is an institution with respect to which the Commission has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or
    - ii. Is an institution whose credits are accepted on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. This term also includes a public or nonprofit private educational institution which, in lieu of the requirement in this subsection 309(A)(16)(d)(i) admits as regular students persons who are beyond the age of compulsory school attendance in the state in which the institution is located and who have the ability to benefit from the training offered by the institution.
18. "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.
  19. "Parent" means the student's mother or father, or both, legal guardians or legally adoptive parents. This does not include foster parents.
  20. "Part-time undergraduate student" is a student who is enrolled at least half-time, but less than full-time, in an eligible program at an eligible and participating Arizona institution. In no case will this be less than six semester, trimester or quarter hours per academic term (including one summer session), or less than 12 clock hours per week for institutions which utilize a clock hour system.
  21. "Part-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of six semester, trimester, or quarter hours during any term, including summer sessions.
  22. "Postsecondary education institution" means an educational institution which offers courses or training programs which are beyond the high school level in scope and complexity and which are open to the general public. Major categories are public universities, private colleges and universities, community colleges and proprietary institutions.
  23. "Program Year" means the consecutive period which begins on July 1 and runs through June 30 of any given year.
  24. "Proprietary institution of higher education" means an educational institution:
    - a. Which provides not less than a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
- b. Which admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered;
  - c. Which is legally authorized by the state in which it is located to provide a program of education beyond secondary education;
  - d. Which is accredited by a nationally recognized accrediting agency or association approved by the U.S. Commissioner of Education for this purpose;
  - e. Which is not a public or other nonprofit institution; and
  - f. Which has been in existence for at least two years. The term also includes any proprietary institution which offers degrees at the associate, baccalaureate or graduate level, and which has an agreement with the U.S. Secretary of Education containing the terms and conditions which the Secretary determines to be necessary to ensure that the availability of assistance to students at the school under this program has not resulted, and will not result, in an increase in the tuition, fees, or other changes to students.
25. "State" means, in addition to the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and Trust Territory of the Pacific Islands, and the Virgin Islands.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

### ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

#### R7-3-401. Purpose

The purpose of the Arizona Private Postsecondary Education Student Financial Assistance Program is to enhance the educational opportunities of citizens wishing to attend Arizona private postsecondary colleges or universities by providing financial assistance to eligible students attending eligible postsecondary institutions.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-402. Definitions

- A. "Award year" means the period from July 1 through June 30 of the succeeding year.
- B. "Commission" means the Commission for Postsecondary Education.
- C. "Eligible postsecondary institution" means any private postsecondary institution:
  1. Licensed to provide baccalaureate degrees in Arizona by the Arizona State Board for Private Postsecondary Education; and

2. Accredited by an accrediting body recognized by the United States Department of Education.
- D.** "Eligible student" means an individual who:
1. Has obtained an associate degree from a community college under the jurisdiction of the Arizona State Board of Directors for Community Colleges; and
  2. Enrolls as a full-time undergraduate student at an eligible postsecondary institution.
- E.** "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary institution, regardless of the definition used at that institution.
- F.** "FAFSA" means Free Application for Federal Student Aid.
- G.** "Financial need" means the cost of attendance less expected family contribution, determined from the student's FAFSA form, minus any grant or scholarship aid.
- H.** "Full-time student" means an individual who is enrolled in at least 12 credit hours per semester or an equivalent calculation.
- I.** "Undergraduate student" means an individual who has not earned a baccalaureate or professional degree and who is enrolled in a postsecondary educational program which leads to, or is creditable toward, a baccalaureate degree.
- J.** "Student financial assistance" means awarding a grant of money to an eligible, undergraduate student for payment of tuition and fees, as defined and allowed under United States Department of Education Title IV student assistance analysis, at an eligible postsecondary institution.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-403. Administration and Allocation of Funds

- A.** The Commission shall administer the Arizona Private Postsecondary Education Student Financial Assistance Program in accordance with A.R.S. § 15-1854 and the rules promulgated thereunder. Administration shall include but not be limited to the award of vouchers to eligible students approved by the Commission.
- B.** The Commission shall maintain financial records of all disbursements made under the Program. These records shall include the amount of each student grant and the award year for which it was disbursed.
- C.** The Commission shall allocate private postsecondary education student financial assistance grant funds to eligible students based on methodology approved by the Commission under these rules.
- D.** Any funds which have been allocated to a student, but are not used by that student, shall be reallocated by the Commission in a subsequent award year.
- E.** Student financial assistance will be awarded to renewal students as first priority and then to new students in the order of receipt of completed applications. In the event that there are more new eligible students in an award year than available vouchers for new students, awards shall be made in the following priority:
1. Date of receipt of a completed application,
  2. Highest grade point averages for the associate degree.
- F.** Student financial assistance in the amount up to \$1,500 may be disbursed to an eligible student for an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
  2. The initial expiration of the institution's refund time period for United States Department of Education Title IV student assistance during the award year. The institution shall then repay the Commission the applicable proportion of the annual award if the eligible student is not enrolled full-time on the date of the expiration of the institution's refund policy during any subsequent portion of the award year.
- G.** Student financial assistance in the amount up to \$750 may be awarded to an eligible student for half of an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
  2. The expiration of the institution's refund time period for United States Department of Education Title IV student financial assistance.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-404. Student Eligibility

- A.** To be considered for an initial private postsecondary education student financial assistance, an eligible student, as defined in R7-3-402(D) and R7-3-402(G), shall submit a complete private postsecondary education student financial assistance program application to the Commission. The application shall contain:
1. Assurance of acceptance at an eligible institution;
  2. Assurance of attendance as a full-time student;
  3. Written authorization to inspect any of the academic or financial records of the student which are in the possession or under the control of the institution, which records are necessary to the proper administration of the provision of the Program and the regulations promulgated thereunder;
  4. A signed statement certifying the student's understanding that the award will be used for tuition and fee expenses only; and
  5. Agreement to reimburse the Commission the total amount of Program awards in the event the student fails to receive a baccalaureate degree within a three-year period of the receipt of the initial student financial assistance award.
- B.** To be eligible for a renewal of a private postsecondary education student financial assistance, a student shall:
1. Meet the conditions of R7-3-402(D);
  2. Provide verification of full-time enrollment and satisfactory academic progress as determined by the institution for the previous award year; and
  3. Not have exceeded a cumulative total of \$3,000 in awards.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-405. Termination of Award

- A.** Student financial assistance shall be terminated if:
1. A student has withdrawn from the PFAP program; or

2. A student has been dismissed from the institution for academic or other reasons; or
  3. A student is not in attendance for more than 12 consecutive months.
- B.** The remaining student financial assistance award money designated for that student shall no longer be available to that student. This money shall be available for awards to other eligible students.

**Historical Note**

Adopted by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

**ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM**

**R7-3-501. Definitions**

- A.** "Account year" means the period beginning on October 1 and ending on September 30 of each year.
- B.** "A.R.S." means Arizona Revised Statutes.
- C.** "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
- D.** "Code" means the Internal Revenue Service Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.
- E.** "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.
- F.** "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.
- G.** "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.
- H.** "Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.
- I.** "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.
- J.** "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 486, effective January 9, 2002 (Supp. 02-1). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

**R7-3-502. Fees**

- A.** Application fee. The application fee is \$10. Application fees shall be forwarded to the Commission at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Commission \$10 for each new account

opened; said tender to be made at the end of the month in which the account is opened. The Committee shall review the application fee every 24 months and recommend to the Commission whether the application fee should be adjusted.

- B.** Administrative fee. For each account opened, the financial institution shall pay to the Commission a one-time fee of \$3 at the end of the month in which the account was opened. The Committee shall review the administrative fee every 24 months and recommend to the Commission whether the administrative fee should be adjusted. The financial institution shall not charge the account owner the administrative fee.
- C.** Marketing fee. The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a \$200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a pro-rated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Committee shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account owner the marketing fee.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

**R7-3-503. RFP Process**

The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4).

**R7-3-504. Changing Designated Beneficiary**

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in A.R.S. § 15-1871(8), of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change shall be effective upon the financial institution's receipt of such certification.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4).

**R7-3-505. Account Balance Limitations**

- A.** For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
1. The product (rounded down to the nearest multiple of \$1000) of 7 and the average one year's undergraduate tuition, fees, room and board at the ten independent four

year eligible educational institutions as measured and last published by the College Board's Independent College 500 Index that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution; or

2. The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.
- B.** No person shall make any contribution to a qualified tuition program during an account year that would cause the sum of the account balances in all qualified tuition programs of the designated beneficiary as of the first day of the account year plus contributions made during the account year less withdrawals during the account year to or from any such account to exceed the maximum allowable balance set forth in subsection (A). Any excess contributions with respect to a designated beneficiary shall be promptly withdrawn as a non-qualified withdrawal or transferred to another account in accordance with A.R.S. § 15-1875(F).
- C.** No financial institution shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).
- D.** Each year, the Commission shall review the amounts set forth in subsection (A).
- E.** Persons making a contribution to an account shall certify that as to the account's designated beneficiary, and to the best of the contributor's knowledge, the contribution shall not cause the balances in all qualified tuition programs to exceed the account balance limitations described in subsection (A).
- F.** If the Commission determines that contributions have been made to program accounts in violation of subsection (B) or (C), it shall notify the designated beneficiary and the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Commission will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allowable balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

#### Historical Note

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 5699, effective November 26, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

#### R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

- A.** An account owner may withdraw funds from an account at any time. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses.
- B.** Withdrawals.
1. Qualified Withdrawals.  
In order to make a qualified withdrawal, the account owner or the account owner's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of their obligations to report, in accordance with R7-3-506(B)(3)(c), refunds received from an eligible educational institution. In addition to the certification, a withdrawal shall be deemed qualified only if:
    - a. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made directly to the eligible educational institution; or
    - b. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution; or
    - c. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.
  2. Withdrawal Based on Death, Disability, or Scholarship.  
A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.
  3. Non-Qualified or Unsubstantiated Withdrawals.  
Pursuant to A.R.S. § 15-1875(H), the Commission has authority to assess penalties for non-qualified withdrawals. If an account owner fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account owner seeks to make a withdrawal in accordance with R7-3-506(B)(1)(c) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.
    - a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is

- determined to be non-qualified. If the withdrawal has been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.
- b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institutions's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account owner, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. If the withdrawal has been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account owner and beneficiary, in writing, of any withholding.
  - c. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the eligible educational institution attended by the designated beneficiary or the eligible educational institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated beneficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.
4. **Substantiation Procedures.**  
Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the eligible educational institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.
  5. **Distributions Made after December 31, 2001.**  
R7-3-506(B)(1) through (4) shall not apply to any withdrawals made after December 31, 2001, except to the extent that any provision contained therein is required for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements of R7-3-501 through R7-3-507, if any, and any requirements for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. To the extent that A.R.S. § 15-1875 requires provisions that will generally enable the Commission to determine whether withdrawals are qualified or nonqualified withdrawals, a financial institution shall require an account owner to state whether the account owner expects that the withdrawal will be a qualified or nonqualified withdrawal.
  - C. The account owner may dispute any withholding made by a financial institution under subsection (B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account owner. If the account owner disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

#### Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 6 A.A.R. 2486, effective June 7, 2000 (Supp. 00-2). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

#### R7-3-507. Oversight of Financial Institutions

- A. **Disclaimer of state liability.** Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.
- B. **No Investment Direction.** A financial institution shall not permit an account owner to move funds, once deposited, that in

any way would result in investment direction under § 529 of the Code.

**C. Reporting Requirements.**

1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.
2. Within the time-frames established by the Code, financial institutions, at the request of the Commission, shall provide Form 1099Q to all distributees.
3. A copy of the statement described in (C)(1) and (2) shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).

**D. Access to books and records.** No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee first approves, with or without modification, such request for access.

**E. Non-renewal.** The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

**F. Marketing programs.**

1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is first submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may

petition the Commission for a credit against future marketing fees.

**Historical Note**

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

**R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance**

**A.** If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in Title 7, Chapter 3, Article 5, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 to 15-1877, then the more restrictive rule shall be deemed liberalized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.

**B.** If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in Title 7, Chapter 3, Article 5 or the statutes contained in A.R.S. §§ 15-1871 to 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3).

## Exhibit 2

### 15-1851. Commission for postsecondary education; purpose; report; members; terms; powers and duties; compensation; quorum; immunity; definition

A. The commission for postsecondary education is established and shall administer the applicable programs identified under section 1203 of the higher education act amendments of 1998 (P.L. 105-244), including the leveraging educational assistance partnership program, the federal family education loan program and the Paul Douglas teacher scholarships program, and shall supervise the state guarantee agency under the higher education act amendments of 1998.

B. In addition to the responsibilities prescribed in subsection A of this section, the commission shall:

1. Provide a forum to public and private postsecondary education institutions for discussion of issues of mutual interest, including the following:

(a) The postsecondary needs of unserved and underserved individuals in this state.

(b) The resources of public and private institutions, organizations and agencies that are located in this state and that are capable of providing postsecondary education opportunities.

(c) Enrollment demand and public policy options to meet statewide needs for postsecondary education services.

(d) Cooperative comprehensive instructional and capital planning.

2. Provide reports pursuant to this subsection on discussions of issues of mutual interest.

3. Coordinate and promote collaborative studies on issues of mutual interest to public and private postsecondary education institutions.

4. Compile and disseminate information to the public regarding postsecondary education opportunities in this state.

5. Prepare an annual report that summarizes the results of the commission's activities prescribed in this section and section 15-1852. The annual report shall be submitted to the speaker of the house of representatives, the president of the senate, the governor and the Arizona state library, archives and public records by December 28.

6. Administer the Arizona teacher student loan program established by chapter 13, article 11 of this title.

C. The commission consists of the executive director of the Arizona board of regents, the executive director of the state board for private postsecondary education and the following additional members who are appointed by the governor pursuant to section 38-211:

1. Two members who hold senior executive or managerial positions in a university under the jurisdiction of the Arizona board of regents.

2. Two members who hold senior executive or managerial positions in a community college district, one representing a community college district in a county with a population of five hundred thousand persons or more and one representing a community college district in a county with a population of less than five hundred thousand persons.

3. Two members who hold senior executive or managerial positions in private postsecondary institutions of higher education that are licensed under title 32, chapter 30, that are located in this state, that offer bachelor's or higher degrees and that are accredited by a regional accreditation agency approved by the United States department of education.

4. Two members who hold senior executive or managerial positions in private postsecondary institutions of higher education that are licensed under title 32, chapter 30, that are located in this state, that offer vocational education programs and that are accredited by a national accreditation agency approved by the United States department of education.

5. One member who holds a senior executive or managerial position in a private cosmetology school that is licensed under title 32, chapter 5, that is located in this state, that offers cosmetology programs approved by the board of cosmetology and that is accredited by a national accreditation agency approved by the United States department of education.

6. One member who holds a senior executive or managerial position in an institution that is licensed under title 32, chapter 23 or under 14 Code of Federal Regulations part 147, that offers vocational education programs at the postsecondary level, that is located in this state and that is not an institution that is qualified under any other category.

7. One member who has held a senior executive or managerial level position in commerce or industry in this state for at least three years before the member's appointment and who is not qualified to serve under any other category.

8. Two members who hold senior executive or managerial positions in the high school education system in this state.

9. One member who is an owner, operator or administrator of a charter school in this state.

D. Members of the commission appointed pursuant to subsection C, paragraphs 1 through 9 of this section shall serve four-year terms. Appointed members of the commission shall be residents of this state. Appointed members of the commission at all times during their terms shall continue to be eligible for appointment under the category that they were appointed to represent. Terms of appointed members of the commission begin on the third Monday in January. No appointed member of the commission may serve more than two consecutive terms.

E. The executive director of the Arizona board of regents and the executive director of the state board for private postsecondary education serve as members of the commission during their respective terms of office and are not eligible to vote with respect to the commission's review of any postsecondary institution.

F. Members appointed pursuant to subsection C, paragraphs 1 through 9 of this section are eligible to receive compensation pursuant to section 38-611 for each day spent in the performance of commission duties and may be reimbursed for expenses properly incurred in connection with the attendance at meetings or hearings of the commission.

G. The governor shall appoint a chairman from among the members of the commission who shall serve a one-year term that begins on the third Monday in January.

H. A majority of the members of the commission constitute a quorum for the transaction of commission business. The vote of a majority of the quorum constitutes authority for the commission to act.

I. Members of the commission are immune from personal liability with respect to all actions that are taken in good faith and within the scope of the commission's authority.

J. For the purposes of this section, "community college district" means a community college district that is established pursuant to sections 15-1402 and 15-1403 or section 15-1402.01 and that is a political subdivision of this state.

#### 15-1852. Additional powers and duties

A. In addition to the powers and duties prescribed in section 15-1851, the commission for postsecondary education shall:

1. Meet at least four times each year.
2. Adopt rules to carry out the purposes of this article.
3. Administer and enforce this article and rules adopted pursuant to this article.
4. Keep a record of its proceedings.
5. Contract, on behalf of this state, with the United States secretary of education for the purpose of complying with the provisions of title IV, part H, subpart one of the higher education amendments of 1992.
6. Comply with title 38, chapter 3, article 3.1 and title 39.

B. The commission may:

1. Adopt an official seal.
2. Contract.

3. Sue and be sued.

4. Receive, hold, make and take leases of and sell personal property for the benefit of the commission.

5. Subject to title 41, chapter 4, article 4, employ personnel as the commission deems necessary to carry out this article. The commission may designate the duties of these personnel. The commission employees are subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6.

6. Establish policy centers under its control to conduct studies.

7. Coordinate and promote studies of interest to postsecondary institutions in this state.

C. The commission is exempt from title 41, chapter 6 but shall adopt rules in a manner substantially similar to title 41, chapter 6.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 10, Article 5, Intermediate Care Facilities for Individuals with Intellectual Disabilities



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 6, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (O20-0601)**  
Title 9, Chapter 10, Article 5, Intermediate Care Facilities for Individuals with Intellectual Disabilities

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### **Summary**

This One Year Review Report (1YRR) from the Department of Health Services relates to rules in Title 9, Chapter 10, Article 5, regarding Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IIDs). These rules were adopted in an exempt rulemaking pursuant to Laws 2019, Ch. 133, § 11. This legislation amended A.R.S. § 36-591(E), which now requires ICF-IIDs to be licensed under A.R.S. Title 36, Chapter 4. Therefore, the Department adopted requirements for licensing through an exempt rulemaking, making the rules consistent with the requirements of the federal Centers for Medicare and Medicaid Services (CMS). Prior to this legislation, ICF-IIDs were already required to comply with CMS requirements as a condition of CMS certification. According to the Department, there are 11 licensed ICF-IIDs in Arizona as of April 1, 2020. The Department submitted this 1YRR pursuant to A.R.S. § 41-1095.

### **Proposed Action**

The Department states that the changes adopted in the rulemaking effective January 1, 2020 make the rules more clear, concise, understandable, and effective. The Department does not propose to take any action on these rules unless substantive issues arise that would require a rulemaking.

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. The session law authorizing the exemption from the Administrative Procedure Act to adopt these rules is Laws 2019, Ch. 133, §11.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department, in an exempt rulemaking, adopted requirements related to the licensing of intermediate care facilities for individuals with intellectual disabilities (ICF-IIDs) to protect public health and safety. These rules were adopted as a result of Laws 2019, Ch. 133, which now requires ICF-IIDs to be licensed by the Department. ICF-IIDs were previously certified by the federal Centers for Medicare and Medicaid Services (CMS). The Department's requirements to license ICF-IIDs are consistent with CMS requirements. Thus, the adopted requirements impose no additional costs to ICF-IIDs.

The Department identifies the stakeholders for these rules to be the Department, the Department of Economic Security, private ICF-IIDs, residents and families, 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 objective of this rulemaking was to adopt requirements for licensing ICF-IIDs to comply with Laws 2019, Ch. 133. Therefore, any costs imposed on ICF-IIDs for obtaining and maintaining a license, are due to the statutory requirement for licensing, rather than the rules themselves. The rules are consistent with CMS requirements with which these facilities are already required to comply, as a condition of CMS certification. Requirements specific to licensure are consistent with requirements for licensing other health care institutions. As such, the Department believes that the rules impose the least burden and costs on the regulated community necessary to achieve the underlying objective of protecting public health and safety.

4. **Has the agency received any written criticisms of the rules within the last year?**

No. The Department did not receive any written criticisms of these rules within the last year.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are clear, concise, understandable, and effective, consistent with other rules and statutes, and effective.

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

Yes. The Department states that the rules are enforced as written.

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

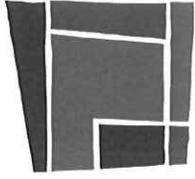
The Department states that federal regulations, specifically 42 CFR 483, subpart I, contain requirements for CMS certification of intermediate care facilities for individuals with intellectual disabilities. The Department states that these rules are consistent with the applicable federal regulations. There are additional requirements for licensure found in A.R.S. § 36-591(E), as amended by Laws 2019, Ch. 133, that make these rules more stringent than the federal regulations, which do not require state licensing of these facilities. The Department properly cites statutory authority for exceeding the requirements of the federal regulations.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that the rules under review require the issuance of a specific agency authorization pursuant to A.R.S. § 36-405 (Powers and duties of the director) and therefore, a general permit is not required. Upon review of the applicable statutes, Council staff agrees that the Department is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(2).

9. **Conclusion**

Council staff finds that the rules reviewed in this 1YRR are clear, concise, understandable, effective, and consistent with the session law granting the Department an exemption from the APA to adopt these rules. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

April 16, 202

**VIA EMAIL:** [grrc@azdoa.gov](mailto: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. 10, Articles 1 and 5, One-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the One-Year-Review Report, required by A.R.S. § 41-1095, from the Arizona Department of Health Services (Department) for Sections adopted under an exemption authorized under Laws 2019, Ch. 133, § 11, which is due on or before April 25, 2020.

In this report, the Department has reviewed three Sections in Article 1, R9-10-101, R9-10-102, and R9-10-106, which were revised as part of the rulemaking, as well as all of Article 5, which was newly adopted by the rulemaking. After consulting with Council staff, the Department has not included the essentially recodified Sections in the new Article 21 in this review, because they were not adopted under the exemption and, thus, do not need to be included under the plain language of A.R.S. § 41-1095.

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](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie Elzenga', with a horizontal line extending to the right.

Stephanie Elzenga  
Director's Designee

SE:rms

Enclosures

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



**Arizona Department of Health Services**

**One-Year-Review Report**

**Title 9. Health Services**

**Chapter 10. Department of Health Services**

**Health Care Institutions: Licensing**

**Article 5. Intermediate Care Facilities for Individuals with Intellectual Disabilities**

**April 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and (17) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-405, 36-406, 36-407, and 36-425.05

Statute or session law authorizing exempt rulemaking: Laws 2019, Ch. 133, § 11

**2. The objective of each rule:**

The purpose of the rules is to establish requirements related to the licensing of intermediate care facilities for individuals with intellectual disabilities to protect public health and safety.

<b>Rule</b>	<b>Objective</b>
R9-10-101	To define terms used in Article 1 or more than one Article in the Chapter so that a reader can consistently interpret requirements.
R9-10-102	To identify the classes and subclasses under which a health care institution may apply for a license; and To require a health care institution to comply with the requirements in Article 17 if there are no specific rules in 9 A.A.C. 10 for the health care institution's class or subclass, or if the Department determines that the health care institution is an unclassified health care institution.
R9-10-106	To establish a range of fees that the Department collects for licensing of health care institutions.
R9-10-501	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-10-502	To specify license application requirements, in addition to those in A.R.S. § 36-422 and R9-10-105 that are specific to intermediate care facilities for individuals with intellectual disabilities.
R9-10-503	To establish minimum requirements and responsibilities for the governing authority and administrator of an intermediate care facility for individuals with intellectual disabilities.
R9-10-504	To establish minimum requirements for the quality management program of an intermediate care facility for individuals with intellectual disabilities.
R9-10-505	To establish minimum requirements for persons who contract with the licensee to provide services on behalf of an intermediate care facility for individuals with intellectual disabilities.
R9-10-506	To establish minimum standards for personnel of an intermediate care facility for individuals with intellectual disabilities and minimum standards for documentation of personnel member qualifications.
R9-10-507	To establish minimum requirements for admission and assessment.

R9-10-508	To establish minimum requirements for the transfer or discharge of a resident.
R9-10-509	To establish minimum requirements for the transport of a resident.
R9-10-510	To establish minimum requirements for transportation provided to a resident and for resident outings.
R9-10-511	To establish minimum standards for resident rights.
R9-10-512	To establish minimum requirements for resident medical records.
R9-10-513	To establish minimum requirements for rehabilitation services and for habilitation services provided to a resident.
R9-10-514	To establish minimum requirements for the comprehensive assessment of a resident and the development of an individual program plan for the resident.
R9-10-515	To establish minimum requirements for the use of seclusion or restraint on a resident.
R9-10-516	To establish minimum requirements for physical health services provided to a resident.
R9-10-517	To establish minimum requirements for behavioral care provided to a resident.
R9-10-518	To establish minimum requirements for clinical laboratory services provided on the premises of an intermediate care facility for individuals with intellectual disabilities.
R9-10-519	To establish minimum requirements for respiratory care services provided on the premises of an intermediate care facility for individuals with intellectual disabilities.
R9-10-520	To establish minimum requirements for medication services provided by an intermediate care facility for individuals with intellectual disabilities.
R9-10-521	To establish minimum standards for infection control.
R9-10-522	To establish minimum requirements for food services provided by an intermediate care facility for individuals with intellectual disabilities.
R9-10-523	To establish minimum emergency and safety standards for an intermediate care facility for individuals with intellectual disabilities.
R9-10-524	To establish minimum environmental standards for an intermediate care facility for individuals with intellectual disabilities.
R9-10-525	To establish minimum physical plant standards for an intermediate care facility for individuals with intellectual disabilities.

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

4. **Are the rules consistent with other rules and statutes?** Yes X No \_\_

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation

5. **Are the rules enforced as written?** Yes X No   

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes X No   

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation

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

*If yes, please fill out the table below:*

Rule	Explanation

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

Intermediate care facilities for individuals with intellectual disabilities (ICF-IIDs) are a class of health care institutions that primarily provide health and rehabilitative services to individuals with developmental disabilities. These facilities are certified by the federal Centers for Medicare and Medicaid Services (CMS), but, until Laws 2019, Ch. 133 was enacted, were not required to be licensed by the Department. A.R.S. § 36-591(E), as amended by Laws 2019, Ch. 133, now requires ICF-IIDs to be licensed under A.R.S. Title 36, Chapter 4, and the Department adopted rules in 9 A.A.C. 10, Article 5, for the licensing, through exempt rulemaking, consistent with federal CMS requirements. There are 11 licensed ICF-IIDs in Arizona as of April 1, 2020, of which one is private and the others run under contract with the Arizona Department of Economic Security. Stakeholders for these rules include the Department, the Arizona Department of Economic Security, private ICF-IIDs, residents and their families, and the general public.

In an exempt rulemaking effective April 25, 2019, the Department adopted requirements related to the licensing of intermediate care facilities for individuals with intellectual disabilities to protect public health and safety. This rulemaking included revising three Sections in 9 A.A.C. 10, Article 1; adopting requirements specific to ICF-IIDs in a new Article 5; and moving the rules for recovery care centers that has been in Article 5, without change, into Article 21. After consulting with Council staff, the Department has not included the essentially

recodified Sections in the new Article 21 in this review because they were not adopted under the exemption and, thus, do not need to be included under the plain language of A.R.S. § 41-1095.

Three Sections were revised in Article 1 as part of the rulemaking. In R9-10-101, six definitions were added and one amended. In R9-10-102, ICF-IIDs were added to the list of health care institution classes/subclasses. In R9-10-106, ICF-IIDs were added to the list of facilities for which fees are specified. All three of these Sections provide information to stakeholders without establishing additional requirements and, thus, provide a benefit to stakeholders. These Sections were further revised as part of the large regular rulemaking for 9 A.A.C. 10 to adopt requirements for perpetual licensing, which was approved by the Council in June 2019.

Specific requirements for the governing authorities and administrators of ICF-IIDs; for quality management and contracted services; for admission, assessment, discharge, transfer, transport, and transportation of residents; for services to be provided to residents; for medical records; and for food service were adopted in the new Article 5. Standards for infection control, environmental conditions, and physical plant were also adopted. These rules were adopted very quickly to respond to unsafe conditions at a private ICF-IID, and there was very little stakeholder involvement. Therefore, after allowing a few months of implementation to determine what changes needed to be made to the rules, the Department undertook a second exempt rulemaking to improve the effectiveness of the rules. For the second exempt rulemaking, the Department sought input from stakeholders and changed the rules by including levels of services that an ICF-IID may request and be authorized by the Department to provide. The revised rules became effective on January 1, 2020.

For the purposes of this document, annual costs/revenues changes are designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The statutory change, through the new rules, imposed a substantial cost on the Department, which must now license a new class of health care institution. The Department believes that most of the requirements in the rules are consistent with CMS requirements that an ICF-IID would already be following to qualify for CMS certification. Therefore, the addition of these requirements in the rules would impose no additional costs to ICF-IIDs. Requirements related to applying for a license and for complying with the administrative and documentation requirements for licensure are consistent with those for all other health care institutions. The costs imposed on ICF-IIDs for obtaining and maintaining a license, which may range from minimal to substantial, are due to the statutory requirement for licensing, rather than due the rules themselves. The Department believes that residents and their families may receive a significant benefit from the Department's oversight of ICF-IIDs and the increased effectiveness of the services to be provided and the safety of the facilities. Similarly, the general public may receive a significant benefit from the rules.

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.*

Not applicable, as this review of new rules is in response to a one-time rulemaking exemption.

**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:**

A.R.S. § 36-591(E), as amended by Laws 2019, Ch. 133, now requires intermediate care facilities to be licensed by the Department under A.R.S. Title 36, Chapter 4. The objective of this rulemaking was to adopt requirements for licensing intermediate care facilities for individuals with intellectual disabilities to comply with Laws 2019, Ch. 133. Thus, the Arizona State Legislature determined that the probable benefits of the rules requiring these facilities to be licensed outweighed the probable costs of rulemaking. The Department agrees. The rules are consistent with CMS requirements with which these facilities are already required to comply, as a condition of CMS certification. Requirements specific to licensure are consistent with requirements for licensing other health care institutions. As such, the Department believes that the rules impose the least burden and costs on the regulated community necessary to achieve the underlying objective.

**12. Are the rules more stringent than corresponding federal laws? Yes X 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)?*

Federal law, 42 CFR 483, subpart I, contains requirements for CMS certification of intermediate care facilities for individuals with intellectual disabilities. These rules are consistent with the federal requirements. Additional requirements for licensure, found in A.R.S. § 36-591(E), as amended by Laws 2019, Ch. 133, make the rules more stringent than the federal requirements, which do not require state licensing of these facilities.

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

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

**14. Proposed course of action**

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

The Department believes that the changes adopted in the rulemaking effective January 1, 2020, make the rules clear, concise, understandable, and effective. The Department does not plan to amend the rules in 9 A.A.C. 10, Article 5, or the three Sections in Article 1 that were part of the original rulemaking, unless substantive issues arise that would necessitate rulemaking.

***Current rules in 9 A.A.C. 10 that were included in the exempt rulemaking effective April 2019, including:  
R9-10-101, R9-10-102, R9-10-106, and Article 5.  
Changes have been made to all three of the rules in Article 1 and many of the rules in Article 5 through  
additional rulemakings since April 2019.***

**TITLE 9. HEALTH SERVICES  
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSING  
ARTICLE 1. GENERAL**

Section

- R9-10-101. Definitions
- R9-10-102. Health Care Institution Classes and Subclasses; Requirements
- R9-10-106. Fees

**ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH  
INTELLECTUAL DISABILITIES**

Section

- R9-10-501. Definitions
- R9-10-502. Supplemental Application Requirements and Documentation Submission Requirements
- R9-10-503. Administration
- R9-10-504. Quality Management
- R9-10-505. Contracted Services
- R9-10-506. Personnel
- R9-10-507. Admission
- R9-10-508. Transfer; Discharge
- R9-10-509. Transport
- R9-10-510. Transportation; Resident Outings
- R9-10-511. Resident Rights
- R9-10-512. Medical Records
- R9-10-513. Rehabilitation Services and Habilitation Services
- R9-10-514. Individual Program Plan
- R9-10-515. Seclusion; Restraint
- R9-10-516. Physical Health Services
- R9-10-517. Behavioral Care
- R9-10-518. Clinical Laboratory Services
- R9-10-519. Respiratory Care Services
- R9-10-520. Medication Services
- R9-10-521. Infection Control

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- R9-10-522. Food Services
- R9-10-523. Emergency and Safety Standards
- R9-10-524. Environmental Standards
- R9-10-525. Physical Plant Standards

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## **ARTICLE 1. GENERAL**

### **R9-10-101. Definitions**

In addition to the definitions in A.R.S. § §§ 36-401(A) and 36-439, the following definitions apply in this Chapter unless otherwise specified:

1. “Abortion clinic” has the same meaning as in A.R.S. § 36-449.01.
2. “Abuse” means:
  - a. The same:
    - i. For an individual 18 years of age or older, as in A.R.S. § 46-451; and
    - ii. For an individual less than 18 years of age, as in A.R.S. § 8-201;
  - b. A pattern of ridiculing or demeaning a patient;
  - c. Making derogatory remarks or verbally harassing a patient; or
  - d. Threatening to inflict physical harm on a patient.
3. “Accredited” has the same meaning as in A.R.S. § 36-422.
4. “Active malignancy” means a cancer for which:
  - a. A patient is undergoing treatment, such as through:
    - i. One or more surgical procedures to remove the cancer;
    - ii. Chemotherapy, as defined in A.A.C. R9-4-401; or
    - iii. Radiation treatment, as defined in A.A.C. R9-4-401;
  - b. There is no treatment; or
  - c. A patient is refusing treatment.
5. “Activities of daily living” means ambulating, bathing, toileting, grooming, eating, and getting in or out of a bed or a chair.
6. “Acuity” means a patient’s need for medical services, nursing services, or behavioral health services based on the patient’s medical condition or behavioral health issue.
7. “Acuity plan” means a method for establishing nursing personnel requirements by unit based on a patient’s acuity.
8. “Adjacent” means not intersected by:
  - a. Property owned, operated, or controlled by a person other than the applicant or licensee; or
  - b. A public thoroughfare.
9. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.

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10. “Administrative office” means a location used by personnel for recordkeeping and record retention but not for providing medical services, nursing services, behavioral health services, or health-related services.
11. “Admission” or “admitted” means, after completion of an individual’s screening or registration by a health care institution, the individual begins receiving physical health services or behavioral health services and is accepted as a patient of the health care institution.
12. “Adult” has the same meaning as in A.R.S. § 1-215.
13. “Adult behavioral health therapeutic home” means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self-administration of medication, and provides feedback to a case manager related to behavior for an individual 18 years of age or older based on the individual’s behavioral health issue and need for behavioral health services and may provide behavioral health services under the clinical oversight of a behavioral health professional.
14. “Adult residential care institution” means a subclass of behavioral health residential facility that only admits residents 18 years of age and older and provides recidivism reduction services.
15. “Adverse reaction” means an unexpected outcome that threatens the health or safety of a patient as a result of a medical service, nursing service, or health-related service provided to the patient.
16. “Affiliated counseling facility” means a counseling facility that shares administrative support with one or more other counseling facilities that operate under the same governing authority.
17. “Affiliated outpatient treatment center” means an outpatient treatment center authorized by the Department to provide behavioral health services that provides administrative support to a counseling facility or counseling facilities that operate under the same governing authority as the outpatient treatment center.
18. “Alternate licensing fee due date” means the last calendar day in a month each year, other than the anniversary date of a facility’s health care institution license, by which a licensee is required to pay the applicable fees in R9-10-106.
19. “Ancillary services” means services other than medical services, nursing services, or health-related services provided to a patient.

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20. “Anesthesiologist” means a physician granted clinical privileges to administer anesthesia.
21. “Applicant” means a governing authority requesting:
  - a. Approval of a health care institution’s architectural plans and specifications for construction or modification,
  - b. Approval of a modification,
  - c. Approval of an alternate licensing fee due date, or
  - d. A health care institution license.
22. “Application packet” means the information, documents, and fees required by the Department for the:
  - a. Approval of a health care institution's modification or architectural plans and specifications for construction or modification,
  - b. Approval of a modification,
  - c. Approval of an alternate licensing fee due date, or
  - d. Licensing of a health care institution.
23. “Assessment” means an analysis of a patient’s need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.
24. “Assistance in the self-administration of medication” means restricting a patient’s access to the patient’s medication and providing support to the patient while the patient takes the medication to ensure that the medication is taken as ordered.
25. “Attending physician” means a physician designated by a patient to participate in or coordinate the medical services provided to the patient.
26. “Authenticate” means to establish authorship of a document or an entry in a medical record by:
  - a. A written signature;
  - b. An individual’s initials, if the individual’s written signature appears on the document or in the medical record;
  - c. A rubber-stamp signature; or
  - d. An electronic signature code.
27. “Authorized service” means specific medical services, nursing services, behavioral health services, or health-related services provided by a specific health care institution class or subclass for which the health care institution is required to obtain approval from the Department before providing the medical services, nursing services, or health-related

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services.

28. “Available” means:
- a. For an individual, the ability to be contacted and to provide an immediate response by any means possible;
  - b. For equipment and supplies, physically retrievable at a health care institution; and
  - c. For a document, retrievable by a health care institution or accessible according to the applicable time-frames in this Chapter.
29. “Behavioral care”:
- a. Means limited behavioral health services, provided to a patient whose primary admitting diagnosis is related to the patient’s need for physical health services, that include:
    - i. Assistance with the patient’s psychosocial interactions to manage the patient’s behavior that can be performed by an individual without a professional license or certificate including:
      - (1) Direction provided by a behavioral health professional, and
      - (2) Medication ordered by a medical practitioner or behavioral health professional; or
    - ii. Behavioral health services provided by a behavioral health professional on an intermittent basis to address the patient’s significant psychological or behavioral response to an identifiable stressor or stressors; and
  - b. Does not include court-ordered behavioral health services.
30. “Behavioral health facility” means a behavioral health inpatient facility, a behavioral health residential facility, a substance abuse transitional facility, a behavioral health specialized transitional facility, an outpatient treatment center that only provides behavioral health services, an adult behavioral health therapeutic home, a behavioral health respite home, or a counseling facility.
31. “Behavioral health inpatient facility” means a health care institution that provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
- a. Have a limited or reduced ability to meet the individual’s basic physical needs;
  - b. Suffer harm that significantly impairs the individual’s judgment, reason, behavior, or capacity to recognize reality;

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- c. Be a danger to self;
  - d. Be a danger to others;
  - e. Be persistently or acutely disabled, as defined in A.R.S. § 36-501; or
  - f. Be gravely disabled.
32. “Behavioral health issue” means an individual’s condition related to a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
33. “Behavioral health observation/stabilization services” means crisis services provided, in an outpatient setting, to an individual whose behavior or condition indicates that the individual:
- a. Requires nursing services,
  - b. May require medical services, and
  - c. May be a danger to others or a danger to self.
34. “Behavioral health paraprofessional” means an individual who is not a behavioral health professional who provides, under supervision by a behavioral health professional, the following services to a patient to address the patient’s behavioral health issue:
- a. Services under supervision by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under A.R.S., A.R.S. Title 32, Chapter 33; or
  - b. Health-related services.
35. “Behavioral health professional” means:
- a. An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
    - i. Independently engage in the practice of behavioral health, as defined in A.R.S. § 32-3251; or
    - ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health, as defined in A.R.S. § 32-3251, under direct supervision as defined in A.A.C. R4-6-101;
  - b. A psychiatrist as defined in A.R.S. § 36-501;
  - c. A psychologist as defined in A.R.S. § 32-2061;
  - d. A physician;
  - e. A behavior analyst as defined in A.R.S. § 32-2091; or
  - f. A registered nurse practitioner licensed as an adult psychiatric and mental health

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- nurse; or
- g. A registered nurse with:
- i. A psychiatric-mental health nursing certification, or
  - ii. One year of experience providing behavioral health services.
36. “Behavioral health residential facility” means a health care institution that provides treatment to an individual experiencing a behavioral health issue that:
- a. Limits the individual’s ability to be independent, or
  - b. Causes the individual to require treatment to maintain or enhance independence.
37. “Behavioral health respite home” means a residence where respite care services, which may include assistance in the self-administration of medication, are provided to an individual based on the individual’s behavioral health issue and need for behavioral health services.
38. “Behavioral health specialized transitional facility” means a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.
39. “Behavioral health technician” means an individual who is not a behavioral health professional who provides, with clinical oversight by a behavioral health professional, the following services to a patient to address the patient’s behavioral health issue:
- a. Services with clinical oversight by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under A.R.S., A.R.S. Title 32, Chapter 33; or
  - b. Health-related services.
40. “Benzodiazepine” means any one of a class of sedative-hypnotic medications, characterized by a chemical structure that includes a benzene ring linked to a seven-membered ring containing two nitrogen atoms, that are commonly used in the treatment of anxiety.
41. “Biohazardous medical waste” has the same meaning as in A.A.C. R18-13-1401.
42. “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.

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43. “Case manager” means an individual assigned by an entity other than a health care institution to coordinate the physical health services or behavioral health services provided to a patient at the health care institution.
44. “Certification” means, in this Article, a written statement that an item or a system complies with the applicable requirements incorporated by reference in R9-10-104.01.
45. “Certified health physicist” means an individual recognized by the American Board of Health Physics as complying with the health physics criteria and examination requirements established by the American Board of Health Physics.
46. “Change in ownership” means conveyance of the ability to appoint, elect, or otherwise designate a health care institution’s governing authority from an owner of the health care institution to another person.
47. “Chief administrative officer” or “administrator” means an individual designated by a governing authority to implement the governing authority’s direction in a health care institution.
48. “Clinical laboratory services” means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or impairment of a human being, or for the assessment of the health of a human being, including procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.
49. “Clinical oversight” means:
  - a. Monitoring the behavioral health services provided by a behavioral health technician to ensure that the behavioral health technician is providing the behavioral health services according to the health care institution’s policies and procedures, and, if applicable, a patient’s treatment plan;
  - b. Providing on-going review of a behavioral health technician’s skills and knowledge related to the provision of behavioral health services;
  - c. Providing guidance to improve a behavioral health technician’s skills and knowledge related to the provision of behavioral health services; and
  - d. Recommending training for a behavior health technician to improve the behavioral health technician’s skills and knowledge related to the provision of behavioral health services.

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50. “Clinical privileges” means authorization to a medical staff member to provide medical services granted by a governing authority or according to medical staff bylaws.
51. “Collaborating health care institution” means a health care institution licensed to provide outpatient behavioral health services that has a written agreement with an adult behavioral health therapeutic home or a behavioral health respite home to:
  - a. Coordinate behavioral health services provided to a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home, and
  - b. Work with the provider to ensure a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home receives behavioral health services according to the resident’s treatment plan.
52. “Common area” means licensed space in health care institution that is:
  - a. Not a resident’s bedroom or a residential unit,
  - b. Not restricted to use by employees or volunteers of the health care institution, and
  - c. Available for use by visitors and other individuals on the premises.
53. “Communicable disease” has the same meaning as in A.R.S. § 36-661.
54. “Conspicuously posted” means placed:
  - a. At a location that is visible and accessible; and
  - b. Unless otherwise specified in the rules, within the area where the public enters the premises of a health care institution.
55. “Consultation” means an evaluation of a patient requested by a medical staff member or personnel member.
56. “Contracted services” means medical services, nursing services, behavioral health services, health-related services, ancillary services, or environmental services provided according to a documented agreement between a health care institution and the person providing the medical services, nursing services, health-related services, ancillary services, or environmental services.
57. “Contractor” has the same meaning as in A.R.S. § 32-1101.
58. “Controlled substance” has the same meaning as in A.R.S. § 36-2501.
59. “Counseling” has the same meaning as “practice of professional counseling” in A.R.S. § 32-3251.
60. “Counseling facility” means a health care institution that only provides counseling, which

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may include:

- a. DUI screening, education, or treatment according to the requirements in 9 A.A.C. 20, Article 1; or
  - b. Misdemeanor domestic violence offender treatment according to the requirements in 9 A.A.C. 20, Article 2.
61. “Court-ordered evaluation” has the same meaning as “evaluation” in A.R.S. § 36-501.
  62. “Court-ordered treatment” means treatment provided according to A.R.S. Title 36, Chapter 5.
  63. “Crisis services” means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.
  64. “Current” means up-to-date, extending to the present time.
  65. “Daily living skills” means activities necessary for an individual to live independently and include meal preparation, laundry, housecleaning, home maintenance, money management, and appropriate social interactions.
  66. “Danger to others” has the same meaning as in A.R.S. § 36-501.
  67. “Danger to self” has the same meaning as in A.R.S. § 36-501.
  68. “Detoxification services” means behavioral health services and medical services provided to an individual to:
    - a. Treat the individual’s signs or symptoms of withdrawal from alcohol or other drugs, and
    - b. Reduce or eliminate the individual’s dependence on alcohol or other drugs.
  69. “Diagnostic procedure” means a method or process performed to determine whether an individual has a medical condition or behavioral health issue.
  70. “Dialysis” means the process of removing dissolved substances from a patient’s body by diffusion from one fluid compartment to another across a semi-permeable membrane.
  71. “Dialysis services” means medical services, nursing services, and health-related services provided to a patient receiving dialysis.
  72. “Dialysis station” means a designated treatment area approved by the Department for use by a patient receiving dialysis or dialysis services.
  73. “Dialyzer” means an apparatus containing semi-permeable membranes used as a filter to remove wastes and excess fluid from a patient’s blood.
  74. “Disaster” means an unexpected occurrence that adversely affects a health care institution’s ability to provide services.

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75. “Discharge” means a documented termination of services to a patient by a health care institution.
76. “Discharge instructions” means documented information relevant to a patient’s medical condition or behavioral health issue provided by a health care institution to the patient or the patient’s representative at the time of the patient’s discharge.
77. “Discharge planning” means a process of establishing goals and objectives for a patient in preparation for the patient’s discharge.
78. “Discharge summary” means a documented brief review of services provided to a patient, current patient status, and reasons for the patient’s discharge.
79. “Disinfect” means to clean in order to prevent the growth of or to destroy disease-causing microorganisms.
80. “Documentation” or “documented” means information in written, photographic, electronic, or other permanent form.
81. “Drill” means a response to a planned, simulated event.
82. “Drug” has the same meaning as in A.R.S. § 32-1901.
83. “Electronic” has the same meaning as in A.R.S. § 44-7002.
84. “Electronic signature” has the same meaning as in A.R.S. § 44-7002.
85. “Emergency” means an immediate threat to the life or health of a patient.
86. “Emergency medical services provider” has the same meaning as in A.R.S. § 36-2201.
87. “Emergency services” means unscheduled medical services provided in a designated area to an outpatient in an emergency.
88. “End-of-life” means that a patient has a documented life expectancy of six months or less.
89. “Environmental services” means activities such as housekeeping, laundry, facility maintenance, or equipment maintenance.
90. “Equipment” means, in this Article, an apparatus, a device, a machine, or a unit that is required to comply with the specifications incorporated by reference in R9-10-104.01.
91. “Exploitation” has the same meaning as in A.R.S. § 46-451.
92. “Factory-built building” has the same meaning as in A.R.S. § 41-4001.
93. “Family” or “family member” means an individual’s spouse, sibling, child, parent, grandparent, or another individual designated by the individual.
94. “Follow-up instructions” means information relevant to a patient’s medical condition or behavioral health issue that is provided to the patient, the patient’s representative, or a

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health care institution.

95. “Food services” means the storage, preparation, serving, and cleaning up of food intended for consumption in a health care institution.
96. “Full-time” means 40 hours or more every consecutive seven calendar days.
97. “Garbage” has the same meaning as in A.A.C. R18-13-302.
98. “General consent” means documentation of an agreement from an individual or the individual’s representative to receive physical health services to address the individual’s medical condition or behavioral health services to address the individual’s behavioral health issues.
99. “General hospital” means a subclass of hospital that provides surgical services and emergency services.
100. “Gravely disabled” has the same meaning as “grave disability” in A.R.S. § 36-501.
101. “Hazard” or “hazardous” means a condition or situation where a patient or other individual may suffer physical injury.
102. “Health care directive” has the same meaning as in A.R.S. § 36-3201.
103. “Hemodialysis” means the process for removing wastes and excess fluids from a patient’s blood by passing the blood through a dialyzer.
104. “Home health agency” has the same meaning as in A.R.S. § 36-151.
105. “Home health aide” means an individual employed by a home health agency to provide home health services under the direction of a registered nurse or therapist.
106. “Home health aide services” means those tasks that are provided to a patient by a home health aide under the direction of a registered nurse or therapist.
107. “Home health services” has the same meaning as in A.R.S. § 36-151.
108. “Hospice inpatient facility” means a subclass of hospice that provides hospice services to a patient on a continuous basis with the expectation that the patient will remain on the hospice’s premises for 24 hours or more.
109. “Hospital” means a class of health care institution that provides, through an organized medical staff, inpatient beds, medical services, continuous nursing services, and diagnosis or treatment to a patient.
110. “Immediate” means without delay.
111. “Incident” means an unexpected occurrence that harms or has the potential to harm a patient, while the patient is:
  - a. On the premises of a health care institution, or

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- b. Not on the premises of a health care institution but directly receiving physical health services or behavioral health services from a personnel member who is providing the physical health services or behavioral health services on behalf of the health care institution.
112. “Infection control” means to identify, prevent, monitor, and minimize infections.
113. “Infectious tuberculosis” has the same meaning as “infectious active tuberculosis” in A.A.C. R9-6-101.
114. “Informed consent” means:
- a. Advising a patient of a proposed treatment, surgical procedure, psychotropic drug medication, opioid, or diagnostic procedure; alternatives to the treatment, surgical procedure, psychotropic drug medication, opioid, or diagnostic procedure; and associated risks and possible complications; and
  - b. Obtaining documented authorization for the proposed treatment, surgical procedure, psychotropic drug medication, opioid, or diagnostic procedure from the patient or the patient’s representative.
115. “In-service education” means organized instruction or information that is related to physical health services or behavioral health services and that is provided to a medical staff member, personnel member, employee, or volunteer.
116. “Interdisciplinary team” means a group of individuals consisting of a resident’s attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident’s comprehensive assessment or, if applicable, placement evaluation.
117. “Intermediate care facility for individuals with intellectual disabilities” or “ICF/IID” has the same meaning as in A.R.S. § 36-551.
118. “Interval note” means documentation updating a patient’s:
- a. Medical condition after a medical history and physical examination is performed,  
or
  - b. Behavioral health issue after an assessment is performed.
119. “Isolation” means the separation, during the communicable period, of infected individuals from others, to limit the transmission of infectious agents.
120. “Leased facility” means a facility occupied or used during a set time period in exchange for compensation.
121. “License” means:

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- a. Written approval issued by the Department to a person to operate a class or subclass of health care institution at a specific location; or
  - b. Written approval issued to an individual to practice a profession in this state.
122. “Licensed occupancy” means the total number of individuals for whom a health care institution is authorized by the Department to provide crisis services in a unit providing behavioral health observation/stabilization services.
123. “Licensee” means an owner approved by the Department to operate a health care institution.
124. “Manage” means to implement policies and procedures established by a governing authority, an administrator, or an individual providing direction to a personnel member.
125. “Medical condition” means the state of a patient’s physical or mental health, including the patient’s illness, injury, or disease.
126. “Medical director” means a physician who is responsible for the coordination of medical services provided to patients in a health care institution.
127. “Medical history” means an account of a patient’s health, including past and present illnesses, diseases, or medical conditions.
128. “Medical practitioner” means a physician, physician assistant, or registered nurse practitioner.
129. “Medical record” has the same meaning as “medical records” in A.R.S. § 12-2291.
130. “Medical staff” means physicians and other individuals licensed pursuant to A.R.S. Title 32 who have clinical privileges at a health care institution.
131. “Medical staff by-laws bylaws” means standards, approved by the medical staff and the governing authority, that provide the framework for the organization, responsibilities, and self-governance of the medical staff.
132. “Medical staff member” means an individual who is part of the medical staff of a health care institution.
133. “Medication” means one of the following used to maintain health or to prevent or treat a medical condition or behavioral health issue:
- a. Biologicals as defined in A.A.C. R18-13-1401,
  - b. Prescription medication as defined in A.R.S. § 32-1901, or
  - c. Nonprescription medication drug as defined in A.R.S. § 32-1901.
134. “Medication administration” means restricting a patient’s access to the patient’s medication and providing the medication to the patient or applying the medication to the

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patient's body, as ordered by a medical practitioner.

135. "Medication error" means:
- a. The failure to administer an ordered medication;
  - b. The administration of a medication not ordered; or
  - c. The administration of a medication:
    - i. In an incorrect dosage,
    - ii. More than 60 minutes before or after the ordered time of administration unless ordered to do so, or
    - iii. By an incorrect route of administration.
136. "Mental disorder" means the same as in A.R.S. § 36-501.
137. "Mobile clinic" means a movable structure that:
- a. Is not physically attached to a health care institution's facility;
  - b. Provides medical services, nursing services, behavioral health services, or health related service to an outpatient under the direction of the health care institution's personnel; and
  - c. Is not intended to remain in one location indefinitely.
138. "Monitor" or "monitoring" means to check systematically on a specific condition or situation.
139. "Neglect" has the same meaning:
- a. For an individual less than 18 years of age, as in A.R.S. § 8-201; and
  - b. For an individual 18 years of age or older, as in A.R.S. § 46-451.
140. "Nephrologist" means a physician who is board eligible or board certified in nephrology by a professional credentialing board.
141. "Nurse" has the same meaning as "registered nurse" or "practical nurse" as defined in A.R.S. § 32-1601.
142. "Nursing personnel" means individuals authorized according to A.R.S. § Title 32, Chapter 15 to provide nursing services.
143. "Observation chair" means a physical piece of equipment that:
- a. Is located in a designated area where behavioral health observation/stabilization services are provided,
  - b. Allows an individual to fully recline, and
  - c. Is used by the individual while receiving crisis services.
144. "Occupational therapist" has the same meaning as in A.R.S. § 32-3401.

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145. “Occupational therapist therapy assistant” has the same meaning as in A.R.S. § 32-3401.
146. “Ombudsman” means a resident advocate who performs the duties described in A.R.S. § 46-452.02.
147. “On-call” means a time during which an individual is available and required to come to a health care institution when requested by the health care institution.
148. “Opioid” means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of “opiate” in A.R.S. § 36-2501.
149. “Opioid agonist treatment medication” means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of opioid -related substance use disorder.
150. “Opioid antagonist” means a prescription medication, as defined in A.R.S. § 32-1901, that:
  - a. Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and
  - b. When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.
151. “Opioid treatment” means providing medical services, nursing services, behavioral health services, health-related services, and ancillary services to a patient receiving an opioid agonist treatment medication for opiate addiction opioid-related substance use disorder.
152. “Order” means instructions to provide:
  - a. Physical health services to a patient from a medical practitioner or as otherwise provided by law; or
  - b. Behavioral health services to a patient from a behavioral health professional.
153. “Orientation” means the initial instruction and information provided to an individual before the individual starts work or volunteer services in a health care institution.
154. “Outing” means a social or recreational activity that:
  - a. Occurs away from the premises,
  - b. Is not part of a behavioral health inpatient facility’s or behavioral health residential facility’s daily routine, and
  - c. Lasts longer than four hours.
155. “Outpatient surgical center” means a class of health care institution that has the facility, staffing, and equipment to provide surgery and anesthesia services to a patient whose recovery, in the opinions of the patient’s surgeon and, if an anesthesiologist would be

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providing anesthesia services to the patient, the anesthesiologist, does not require inpatient care in a hospital.

156. “Outpatient treatment center” means a class of health care institution without inpatient beds that provides physical health services or behavioral health services for the diagnosis and treatment of patients.
157. “Overall time-frame” means the same as in A.R.S. § 41-1072.
158. “Owner” means a person who appoints, elects, or designates a health care institution’s governing authority.
159. “Pain management clinic” has the same meaning as in A.R.S. § 36-448.01.
160. “Participant” means a patient receiving physical health services or behavioral health services from an adult day health care facility or a substance abuse transitional facility.
161. “Participant’s representative” means the same as “patient’s representative” for a participant.
162. “Patient” means an individual receiving physical health services or behavioral health services from a health care institution.
163. “Patient’s representative” means:
  - a. A patient’s legal guardian;
  - b. If a patient is less than 18 years of age and not an emancipated minor, the patient’s parent;
  - c. If a patient is 18 years of age or older or an emancipated minor, an individual acting on behalf of the patient with the written consent of the patient or patient’s legal guardian; or
  - d. A surrogate as defined in A.R.S. § 36-3201.
164. “Person” means the same as in A.R.S. § 1-215 and includes a governmental agency.
165. “Personnel member” means, except as defined in specific Articles in this Chapter and excluding a medical staff member, a student, or an intern, an individual providing physical health services or behavioral health services to a patient.
166. “Pest control program” means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient’s health and safety is not at risk.
167. “Pharmacist” has the same meaning as in A.R.S. § 32-1901.
168. “Physical examination” means to observe, test, or inspect an individual’s body to evaluate health or determine cause of illness, injury, or disease.
169. “Physical health services” means medical services, nursing services, health-related

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- services, or ancillary services provided to an individual to address the individual's medical condition.
170. "Physical therapist" has the same meaning as in A.R.S. § 32-2001.
171. "Physical therapist assistant" has the same meaning as in A.R.S. § 32-2001.
172. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
173. "Placement evaluation" means the same as in A.R.S. § 36-551.
174. "Pre-petition screening" has the same meaning as "prepetition screening" in A.R.S. § 36-501.
175. "Premises" means property that is designated by an applicant or licensee and licensed by the Department as part of a health care institution where physical health services or behavioral health services are provided to a patient.
176. "Prescribe" means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user's behalf, a specific dose of a specific medication in a specific quantity and route of administration.
177. "Professional credentialing board" means a non-governmental organization that designates individuals who have met or exceeded established standards for experience and competency in a specific field.
178. "Progress note" means documentation by a medical staff member, nurse, or personnel member of:
- a. An observed patient response to a physical health service or behavioral health service provided to the patient,
  - b. A patient's significant change in condition, or
  - c. Observed behavior of a patient related to the patient's medical condition or behavioral health issue.
179. "PRN" means *pro re nata* or given as needed.
180. "Project" means specific construction or modification of a facility stated on an architectural plans and specifications approval application.
181. "Provider" means an individual to whom the Department issues a license to operate an adult behavioral health therapeutic home or a behavioral health respite home in the individual's place of residence.
182. "Provisional license" means the Department's written approval to operate a health care institution issued to an applicant or licensee that is not in substantial compliance with the applicable laws and rules for the health care institution.

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183. “Psychotropic medication” means a chemical substance that:
  - a. Crosses the blood-brain barrier and acts primarily on the central nervous system where it affects brain function, resulting in alterations in perception, mood, consciousness, cognition, and behavior; and
  - b. Is provided to a patient to address the patient’s behavioral health issue.
184. “Quality management program” means ongoing activities designed and implemented by a health care institution to improve the delivery of medical services, nursing services, health-related services, and ancillary services provided by the health care institution.
185. “Recovery care center” has the same meaning as in A.R.S. § 36-448.51.
186. “Referral” means providing an individual with a list of the class or subclass of health care institution or type of health care professional that may be able to provide the behavioral health services or physical health services that the individual may need and may include the name or names of specific health care institutions or health care professionals.
187. “Registered dietitian” means an individual approved to work as a dietitian by the American Dietetic Association’s Commission on Dietetic Registration.
188. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.
189. “Registered nurse practitioner” has the same meaning as A.R.S. § 32-1601.
190. “Regular basis” means at recurring, fixed, or uniform intervals.
191. “Rehabilitation services” means medical services provided to a patient to restore or to optimize functional capability.
192. “Research” means the use of a human subject in the systematic study, observation, or evaluation of factors related to the prevention, assessment, treatment, or understanding of a medical condition or behavioral health issue.
193. “Resident” means an individual living in and receiving physical health services or behavioral health services, including rehabilitation services or habilitation services if applicable, from a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, a behavioral health residential facility, an assisted living facility, or an adult behavioral health therapeutic home.
194. “Resident’s representative” means the same as “patient’s representative” for a resident.
195. “Respiratory care services” has the same meaning as “practice of respiratory care” as defined in A.R.S. § 32-3501.
196. “Respiratory therapist” has the same meaning as in A.R.S. § 32-3501.
197. “Respite capacity” means the total number of children who do not stay overnight for

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whom an outpatient treatment center or a behavioral health residential facility is authorized by the Department to provide respite services on the premises of the outpatient treatment center or behavioral health residential facility.

198. “Respite services” means respite care services provided to an individual who is receiving behavioral health services.
199. “Restraint” means any physical or chemical method of restricting a patient’s freedom of movement, physical activity, or access to the patient’s own body.
200. “Risk” means potential for an adverse outcome.
201. “Room” means space contained by a floor, a ceiling, and walls extending from the floor to the ceiling that has at least one door.
202. “Rural general hospital” means a subclass of hospital:
  - a. having 50 or fewer inpatient beds,
  - b. located more than 20 surface miles from a general hospital or another rural general hospital, and
  - c. that requests to be and is being licensed as a rural general hospital rather than a general hospital.
203. “Satellite facility” has the same meaning as in A.R.S. § 36-422.
204. “Scope of services” means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being available to a patient at the health care institution.
205. “Seclusion” means the involuntary solitary confinement of a patient in a room or an area where the patient is prevented from leaving.
206. “Sedative-hypnotic medication” means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.
207. “Self-administration of medication” means a patient having access to and control of the patient’s medication and may include the patient receiving limited support while taking the medication.
208. “Sexual abuse” means the same as in A.R.S. § 13-1404(A).
209. “Sexual assault” means the same as in A.R.S. § 13-1406(A).
210. “Shift” means the beginning and ending time of a continuous work period established by a health care institution’s policies and procedures.
211. “Short-acting opioid antagonist” means an opioid antagonist that, when administered, quickly but for a small period of time reverses, in whole or in part, the pharmacological

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effects of an opioid in the body.

212. “Signature” means:
- a. A handwritten or stamped representation of an individual’s name or a symbol intended to represent an individual’s name, or
  - b. An electronic signature.
213. “Significant change” means an observable deterioration or improvement in a patient’s physical, cognitive, behavioral, or functional condition that may require an alteration to the physical health services or behavioral health services provided to the patient.
214. “Single group license” means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).
215. “Speech-language pathologist” means an individual licensed according A.R.S. Title 35 36, Chapter 17, Article 4 to engage in the practice of speech-language pathology, as defined in A.R.S. § 36-1901.
216. “Special hospital” means a subclass of hospital that:
- a. Is licensed to provide hospital services within a specific branch of medicine; or
  - b. Limits admission according to age, gender, type of disease, or medical condition.
217. “Student” means an individual attending an educational institution and working under supervision in a health care institution through an arrangement between the health care institution and the educational institution.
218. “Substance abuse” means an individual’s misuse of alcohol or other drug or chemical that:
- a. Alters the individual’s behavior or mental functioning;
  - b. Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and
  - c. Impairs, reduces, or destroys the individual’s social or economic functioning.
219. “Substance abuse transitional facility” means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.
220. “Substance use disorder” means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.
221. “Substance use risk” means an individual’s unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.

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222. “Substantial” when used in connection with a modification means:
- a. An addition or removal of an authorized service;
  - b. The addition or removal of a collocator;
  - c. A change in a health care institution’s licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;
  - d. A change in the physical plant, including facilities or equipment, that costs more than \$300,000; or
  - e. A change in the building where a health care institution is located that affects compliance with:
    - i. Applicable physical plant codes and standards incorporated by reference in R9-10-104.01, or
    - ii. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.
223. “Substantive review time-frame” means the same as in A.R.S. § 41-1072.
224. “Supportive services” has the same meaning as in A.R.S. § 36-151.
225. “Surgical procedure” means the excision of or incision of in a patient’s body for the:
- a. Correction of a deformity or defect;
  - b. Repair of an injury; or
  - c. Diagnosis, amelioration, or cure of disease.
226. “Swimming pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.
227. “System” means interrelated, interacting, or interdependent elements that form a whole.
228. “Tapering” means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.
229. “Tax ID number” means a numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.
230. “Telemedicine” has the same meaning as in A.R.S. § 36-3601.
231. “Therapeutic diet” means foods or the manner in which food is to be prepared that are ordered for a patient.
232. “Therapist” means an occupational therapist, a physical therapist, a respiratory therapist, or a speech-language pathologist.
233. “Time-out” means providing a patient a voluntary opportunity to regain self-control in a

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designated area from which the patient is not physically prevented from leaving.

234. “Transfer” means a health care institution discharging a patient and sending the patient to another licensed health care institution as an inpatient or resident without intending that the patient be returned to the sending health care institution.
235. “Transport” means a licensed health care institution:
- a. Sending a patient to a receiving licensed health care institution for outpatient services with the intent of the patient returning to the sending licensed health care institution, or
  - b. Discharging a patient to return to a sending licensed health care institution after the patient received outpatient services from the receiving licensed health care institution.
236. “Treatment” means a procedure or method to cure, improve, or palliate an individual’s medical condition or behavioral health issue.
237. “Treatment plan” means a description of the specific physical health services or behavioral health services that a health care institution anticipates providing to a patient.
238. “Unclassified health care institution” means a health care institution not classified or subclassified in statute or in rule.
239. “Vascular access” means the point on a patient’s body where blood lines are connected for hemodialysis.
240. “Volunteer” means an individual authorized by a health care institution to work for the health care institution on a regular basis without compensation from the health care institution and does not include a medical staff member who has clinical privileges at the health care institution.
241. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

**R9-10-102. Health Care Institution Classes and Subclasses; Requirements**

- A. A person may apply for a license as one of the following classes or subclasses of health care institution:
- 1. General hospital,
  - 2. Rural general hospital,
  - 3. Special hospital,
  - 4. Behavioral health inpatient facility,

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5. Nursing care institution,
  6. Intermediate care facility for individuals with intellectual disabilities,
  7. Recovery care center,
  8. Hospice inpatient facility,
  9. Hospice service agency,
  10. Behavioral health residential facility,
  11. Adult residential care institution,
  12. Assisted living center,
  13. Assisted living home,
  14. Adult foster care home,
  15. Outpatient surgical center,
  16. Outpatient treatment center,
  17. Abortion clinic,
  18. Adult day health care facility,
  19. Home health agency,
  20. Substance abuse transitional facility,
  21. Behavioral health specialized transitional facility,
  22. Counseling facility,
  23. Adult behavioral health therapeutic home,
  24. Behavioral health respite home,
  25. Unclassified health care institution, or
  26. Pain management clinic.
- B.** A person shall apply for a license for the class or subclass that authorizes the provision of the highest level of physical health services or behavioral health services the proposed health care institution plans to provide.
- C.** The Department shall review a proposed health care institution's scope of services to determine whether the requested health care institution class or subclass is appropriate.
- D.** A health care institution shall comply with the requirements in Article 17 of this Chapter if:
1. There are no specific rules in another Article of this Chapter for the health care institution's class or subclass, or
  2. The Department determines that the health care institution is an unclassified health care institution.

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**R9-10-106. Fees**

- A.** An applicant who submits to the Department architectural plans and specifications for the construction or modification of a health care institution shall also submit an architectural plans and specifications review fee as follows:
1. Fifty dollars for a project with a cost of \$100,000 or less;
  2. One hundred dollars for a project with a cost of more than \$100,000 but less than \$500,000; or
  3. One hundred fifty dollars for a project with a cost of \$500,000 or more.
- B.** An applicant submitting an application for a health care institution license shall submit to the Department an application fee of \$50.
- C.** Except as provided in subsection (D) or (E), an applicant submitting an application for a health care institution license or a licensee submitting annual health care institution licensing fees shall submit to the Department the following licensing fee:
1. For an adult day health care facility, assisted living home, or assisted living center:
    - a. For a facility with no licensed capacity, \$280;
    - b. For a facility with a licensed capacity of one to 59 beds, \$280, plus the licensed capacity times \$70;
    - c. For a facility with a licensed capacity of 60 to 99 beds, \$560, plus the licensed capacity times \$70;
    - d. For a facility with a licensed capacity of 100 to 149 beds, \$840, plus the licensed capacity times \$70; or
    - e. For a facility with a licensed capacity of 150 beds or more, \$1,400, plus the licensed capacity times \$70;
  2. For a behavioral health facility:
    - a. For a facility with no licensed capacity, \$375;
    - b. For a facility with a licensed capacity of one to 59 beds, \$375, plus the licensed capacity times \$94;
    - c. For a facility with a licensed capacity of 60 to 99 beds, \$750, plus the licensed capacity times \$94;
    - d. For a facility with a licensed capacity of 100 to 149 beds, \$1,125, plus the licensed capacity times \$94; or
    - e. For a facility with a licensed capacity of 150 beds or more, \$1,875, plus the licensed capacity times \$94;

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3. For a behavioral health facility providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(2), the licensed occupancy times \$94;
4. For a nursing care institution or an intermediate care facility for individuals with intellectual disabilities:
  - a. For a facility with a licensed capacity of one to 59 beds, \$290, plus the licensed capacity times \$73;
  - b. For a facility with a licensed capacity of 60 to 99 beds, \$580, plus the licensed capacity times \$73;
  - c. For a facility with a licensed capacity of 100 to 149 beds, \$870, plus the licensed capacity times \$73; or
  - d. For a facility with a licensed capacity of 150 beds or more, \$1,450, plus the licensed capacity times \$73;
5. For a hospital, a home health agency, a hospice service agency, a hospice inpatient facility, an abortion clinic, a recovery care center, an outpatient surgical center, an outpatient treatment center that is not a behavioral health facility, a pain management clinic, or an unclassified health care institution:
  - a. For a facility with no licensed capacity, \$365;
  - b. For a facility with a licensed capacity of one to 59 beds, \$365, plus the licensed capacity times \$91;
  - c. For a facility with a licensed capacity of 60 to 99 beds, \$730, plus the licensed capacity times \$91;
  - d. For a facility with a licensed capacity of 100 to 149 beds, \$1,095, plus the licensed capacity times \$91; or
  - e. For a facility with a licensed capacity of 150 beds or more, \$1,825, plus the licensed capacity times \$91;
6. For a hospital providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times \$91; and
7. For an outpatient treatment center that is not a behavioral health facility and provides:
  - a. Dialysis services, in addition to the applicable fee in subsection (C)(5), the number of dialysis stations times \$91; and
  - b. Behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times \$91.

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- D.** In addition to the applicable fees in subsections (C)(5) and (C)(6), an applicant submitting an application for a single group hospital license or a licensee with a single group license submitting annual health care institution licensing fees shall submit to the Department an additional fee of \$365 for each of the hospital's satellite facilities and, if applicable, the fees required in subsection (C)(7).
- E.** Subsections (C) and (D) do not apply to a health care institution operated by a state agency according to state or federal law or to an adult foster care home.
- F.** In addition to the applicable fees in subsections (C) and (D), a licensee shall submit a late payment fee of \$250 if submitting annual licensing fees according to R9-10-107(E)(1) or (2)(d).
- G.** All fees are nonrefundable except as provided in A.R.S. § 41-1077.

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**ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH  
INTELLECTUAL DISABILITIES**

**R9-10-501. Definitions**

1. “Active treatment” means rehabilitative services and habilitation services provided to a resident to address the resident’s developmental disability and, if applicable, medical condition.
2. “Acuity” means a resident’s need for medical services, nursing services, rehabilitative services, or habilitation services based on the patient’s medical condition or developmental disability.
3. “Acuity plan” means a method for establishing requirements for nursing personnel or therapists by unit based on a resident’s acuity.
4. “Advocate” means an individual who:
  - a. Assists a resident or the resident’s representative to make the resident’s wants and needs known,
  - b. Recommends a course of action to address the resident’s wants and needs, and
  - c. Supports the resident or the resident’s representative in addressing the resident’s wants and needs.
5. “Assistive device” means a piece of equipment or mechanism that is designed to enable an individual to better carry out activities of daily living.
6. “Dental services” means activities, methods, and procedures included in the practice of dentistry, as described in A.R.S § 32-1202.
7. “Developmental disability” means the same as in A.R.S. § 36-551.
8. “Direct care” means medical services, nursing services, rehabilitation services, or habilitation services provided to a resident.
9. “Habilitation services” means activities provided to an individual to assist the individual with habilitation, as defined in A.R.S. § 36-551.
10. “Inappropriate behavior” means actions by a resident that may:
  - a. Put the resident at risk for physical illness or injury,
  - b. Significantly interfere with the resident’s care,
  - c. Significantly interfere with the resident’s ability to participate in activities or social interactions,
  - d. Put other residents or personnel members at significant risk for physical injury,
  - e. Significantly intrude on another resident’s privacy, or

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- f. Significantly disrupt care for another resident.
- 11. “Individual program plan” means the same as in A.R.S. § 36-551.
- 12. “Medical care plan” means a documented guide for providing medical services and nursing services to a resident requiring continuous nursing services that includes measurable objectives and the methods for meeting the objectives.
- 13. “Nursing care institution administrator” means an individual licensed according to A.R.S. Title 36, Chapter 4, Article 6.
- 14. “Nursing care plan” means a documented guide for providing intermittent nursing services to a resident that includes measurable objectives and the methods for meeting the objectives.
- 15. “Outing” means a social or recreational activity or habilitation services that:
  - a. Occur away from the premises, and
  - b. May be part of a resident’s individual program plan.
- 16. “Qualified intellectual disabilities professional” means one of the following who has at least one year of experience working directly with individuals who have developmental disabilities:
  - a. A physician;
  - b. A registered nurse;
  - c. A physical therapist;
  - d. An occupational therapist;
  - e. A psychologist, as defined in A.R.S. § 32-2061;
  - f. A speech-language pathologist;
  - g. An audiologist, as defined in A.R.S. § 36-1901;
  - f. A registered dietitian, as defined in A.R.S. § 36-416;
  - g. A licensed clinical social worker under A.R.S. § 32-3293; or
  - h. A nursing care institution administrator.
- 17. “Resident’s representative” has the same meaning as “responsible person” in A.R.S. § 36-551.

**R9-10-502. Supplemental Application Requirements and Documentation Submission  
Requirements**

- A. In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as an ICF/IID shall include:
  - 1. In a Department-provided format, whether the applicant is requesting authorization:

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- a. To admit residents who:
    - i. Require continuous nursing services,
    - ii. Require intermittent nursing services, or
    - iii. Do not require nursing services; and
  - b. To provide:
    - i. Active treatment to individuals under 18 years of age, including the licensed capacity requested;
    - ii. Seclusion;
    - iii. Clinical laboratory services;
    - iv. Respiratory care services, or
    - v. Services to residents who have a nursing care plan or medical care plan; and
  - 2. Documentation of the applicant's certification as an ICF/IID by the federal Centers for Medicare and Medicaid Services.
- B.** A licensee shall submit to the Department, with the relevant fees required in R9-10-106(C) and in a Department-provided format:
- 1. The information required in subsection (A)(1), as applicable, and
  - 2. The documentation specified in subsection (A)(2).

**R9-10-503. Administration**

- A.** A governing authority shall:
- 1. Consist of one or more individuals responsible for the organization, operation, and administration of an ICF/IID;
  - 2. Establish, in writing, the ICF/IID's scope of services;
  - 3. Designate, in writing, an administrator for the ICF/IID who:
    - a. Is at least 21 years old; and
    - b. Either:
      - i. Is a nursing care institution administrator, or
      - ii. Has a minimum of three-years' experience working in an ICF/IID;
  - 4. Adopt a quality management program according to R9-10-504;
  - 5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  - 6. Designate, in writing, an acting administrator who meets the requirements in subsection (A)(3), if the administrator is:

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- a. Expected not to be present on the premises of the ICF/IID for more than 30 calendar days, or
  - b. Not present on the premises of the ICF/IID for more than 30 calendar days; and
  7. Except as permitted in subsection (A)(6), when there is a change of administrator, notify the Department according to A.R.S. § 36-425(I) and, if applicable, submit a copy of the new administrator's license under A.R.S. § 36-446.04 to the Department.
- B.** An administrator:
1. Is directly accountable to the governing authority of an ICF/IID for the daily operation of the ICF/IID and all services provided by or at the ICF/IID;
  2. Has the authority and responsibility to manage the ICF/IID;
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the premises of the ICF/IID and accountable for the ICF/IID when the administrator is not present on the ICF/IID's premises; and
  4. Ensures the ICF/IID's compliance with A.R.S. §§ 36-411 and, as applicable, 8-804 or 46-459.
- C.** An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
    - b. Cover the process for checking on a personnel member through the adult protective services registry established according to A.R.S. § 46-459;
    - c. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - d. Include methods to prevent abuse or neglect of a resident, including:
      - i. Training of personnel members, at least annually, on how to recognize the signs and symptoms of abuse or neglect; and
      - ii. Reporting of abuse or neglect of a resident;
    - e. Include how a personnel member may submit a complaint relating to resident care;
    - f. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - g. Cover cardiopulmonary resuscitation training including:

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- i. Which personnel members are required to obtain cardiopulmonary resuscitation training,
  - ii. The method and content of cardiopulmonary resuscitation training,
  - iii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
  - iv. The time-frame for renewal of cardiopulmonary resuscitation training, and
  - v. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
  - h. Cover first aid training;
  - i. Include a method to identify a resident to ensure the resident receives active treatment and other physical health services and behavioral care as ordered;
  - j. Cover resident rights, including assisting a resident who does not speak English or who has a disability to become aware of resident rights;
  - k. Cover specific steps for:
    - i. A resident to file a complaint, and
    - ii. The ICF/IID to respond to a resident's complaint;
  - l. Cover health care directives;
  - m. Cover medical records, including electronic medical records;
  - n. Cover a quality management program, including incident reports and supporting documentation;
  - o. Cover contracted services;
  - p. Cover the process for receiving a fee for a resident and refunding a fee for a resident;
  - q. Cover resident's personal accounts;
  - r. Cover petty cash funds;
  - s. Cover fees and refund policies;
  - t. Cover smoking and the use of tobacco products on the premises; and
  - u. Cover when an individual may visit a resident in an ICF/IID; and
2. Policies and procedures for active treatment and other physical health services and behavioral care are established, documented, and implemented to protect the health and safety of a resident that:
- a. Cover resident screening, admission, transport, transfer, discharge planning, and

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- discharge;
- b. Cover the provision of active treatment and other physical health services and behavioral care;
- c. Cover acuity, including a process for obtaining sufficient nursing personnel and therapists to meet the needs of residents;
- d. Include when general consent and informed consent are required;
- e. Cover storing, dispensing, administering, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
- f. Cover infection control;
- g. Cover interventions to address a resident's inappropriate behavior, including:
  - i. The hierarchy for use;
  - ii. Use of time outs for inappropriate behavior; and
  - iii. Except in an emergency, require positive techniques for behavior modification to be used before more restrictive methods are used;
- h. Cover restraints, both chemical restraints and physical restraints if applicable, that:
  - i. Require an order, including the frequency of monitoring and assessing the restraint; and
  - ii. Are necessary to prevent imminent harm to self or others, including how personnel members will respond to a resident's sudden, intense, or out-of-control behavior;
- i. Cover seclusion of a resident including:
  - i. The requirements for an order, and
  - ii. The frequency of monitoring and assessing a resident in seclusion;
- j. Cover telemedicine, if applicable;
- k. Cover environmental services that affect resident care;
- l. Cover the security of a resident's possessions that are allowed on the premises;
- m. Cover methods to encourage participation of a resident's family or friends or other individuals in activities planned according to R9-10-513(C)(2);
- n. Include a method for obtaining an advocate for a resident, if necessary;
- o. Cover resident outings;
- p. Cover the process for obtaining resident preferences for social, recreational, or

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- rehabilitative activities and meals and snacks; and
- q. Cover whether pets and animals are allowed on the premises, including procedures to ensure that any pets or animals allowed on the premises do not endanger the health or safety of residents or the public;
- 3. Policies and procedures are reviewed at least once every three years and updated as needed;
- 4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
- 5. Unless otherwise stated:
  - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of an ICF/IID, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the ICF/IID.
- D.** An administrator shall designate an individual who is:
  - 1. A qualified intellectual disabilities professional to oversee rehabilitation services provided by or on behalf of the ICF/IID; and
  - 2. If the facility is authorized to admit patients who require intermittent nursing services or continuous nursing services, a registered nurse is appointed as director of nursing to oversee nursing services provided by or on behalf of the ICF/IID.
- E.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from an ICF/IID's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:
  - 1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
  - 2. For a resident under 18 years of age, according to A.R.S. § 13-3620.
- F.** If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from an ICF/IID's employee or personnel member, an administrator shall:
  - 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  - 2. Report the suspected abuse, neglect, or exploitation of the resident as follows:
    - a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
    - b. For a resident under 18 years of age, according to A.R.S. § 13-3620;

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3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (F)(1); and
    - c. The report in subsection (F)(2);
  4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G.** An administrator shall:
1. Allow a resident advocate to assist a resident or the resident's representative with a request or recommendation, and document in writing any complaint submitted to the ICF/IID;
  2. Ensure that a monthly schedule of recreational activities for residents is developed, documented, and implemented; and
  3. Ensure that the following are conspicuously posted on the premises:
    - a. The current ICF/IID license issued by the Department;
    - b. The name, address, and telephone number of:
      - i. The Department's Office of Long Term Care, and
      - ii. Adult Protective Services of the Department of Economic Security;
    - c. A notice that a resident may file a complaint with the Department concerning the ICF/IID;
    - d. The monthly schedule of recreational activities; and

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- e. One of the following:
  - i. A copy of the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect; or
  - ii. A notice that the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect are available for review upon request.
  
- H.** An administrator shall provide written notification to the Department of a resident's:
  - 1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
  - 2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
  
- I.** An administrator shall:
  - 1. Notify a resident's representative, family member, or other individual designated by the resident within one calendar day after:
    - a. The resident's death,
    - b. There is a significant change in the resident's medical condition, or
    - c. The resident has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider; and
  - 2. For an illness or injury in subsection (I)(1)(c), document the following:
    - a. The date and time of the illness or injury;
    - b. A description of the illness or injury;
    - c. If applicable, the names of individuals who observed the injury;
    - d. The actions taken by personnel members, according to policies and procedures;
    - e. The individuals notified by the personnel members; and
    - f. Any action taken to prevent the illness or injury from occurring in the future.
  
- J.** If an administrator administers a resident's personal account at the request of the resident or the resident's representative, the administrator shall:
  - 1. Comply with policies and procedures established according to subsection (C)(1)(q);
  - 2. Designate a personnel member who is responsible for the personal accounts;
  - 3. Maintain a complete and separate accounting of each personal account;
  - 4. Obtain written authorization from the resident or the resident's representative for a

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personal account transaction;

5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
  6. Transfer all money from the resident's personal account in excess of \$50.00 to an interest-bearing account and credit the interest to the resident's personal account; and
  7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's representative, or the probate jurisdiction administering the resident's estate.
- K.** If a petty cash fund is established for use by residents, the administrator shall ensure that:
1. The policies and procedures established according to subsection (C)(1)(r) include:
    - a. A prescribed cash limit of the petty cash fund, and
    - b. The hours of the day a resident may access the petty cash fund; and
  2. A resident's written acknowledgment is obtained for a petty cash transaction.
- L.** An administrator shall ensure that an acuity plan is developed, documented, and implemented for each unit in the ICF/IID that:
1. Includes:
    - a. A method that establishes the types and numbers of personnel members that are required for each unit in the ICF/IID to ensure resident health and safety, and
    - b. A policy and procedure stating the steps the ICF/IID will take to obtain or assign the necessary personnel members to address resident acuity;
  2. Is used when making assignments for resident treatment; and
  3. Is reviewed and updated, as necessary, at least once every 12 months.
- M.** An administrator shall establish and document the criteria for determining when a resident's absence is unauthorized, including the criteria for a resident who:
1. Is absent against medical advice,
  2. Is under the age of 18, or
  3. Does not return to the ICF/IID at the expected time after an authorized absence.
- N.** An administrator shall ensure that the following are on the premises of the ICF/IID:
1. The most recent inspection report of the ICF/IID conducted by the Arizona Department of Economic Security under A.R.S. § 36-557(G)(1), and
  2. Documentation of the most recent monitoring of the ICF/IID conducted by the Arizona Department of Economic Security under A.R.S. § 36-557(G)(2).

**R9-10-504. Quality Management**

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An administrator shall ensure that:

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

**R9-10-505. Contracted Services**

An administrator shall ensure that:

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

**R9-10-506. Personnel**

A. An administrator shall ensure that:

1. A personnel member is:
  - a. At least 21 years old, or
  - b. At least 18 years old and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

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- B.** An administrator shall ensure that:
1. The qualifications, skills, and knowledge required for each type of personnel member:
    - a. Are based on:
      - i. The type of active treatment or other physical health services or behavioral care expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the residents receiving active treatment or other physical health services or behavioral care from the personnel member according to the established job description; and
    - b. Include:
      - i. The specific skills and knowledge necessary for the personnel member to provide the expected active treatment or other physical health services and behavioral care listed in the established job description,
      - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected active treatment or other physical health services or behavioral care listed in the established job description, and
      - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected active treatment or other physical health services or behavioral care listed in the established job description;
  2. A personnel member's skills and knowledge are verified and documented:
    - a. Before the personnel member provides active treatment or other physical health services or and behavioral care, and
    - b. According to policies and procedures; and
  3. Sufficient personnel members are present on an ICF/IID's premises with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the ICF/IID's scope of services,
    - b. Meet the needs of a resident, and
    - c. Ensure the health and safety of a resident.
- C.** An administrator shall ensure that an organizational chart of the ICF/IID is established, updated as necessary, and maintained on the premises:

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1. Outlining the roles, responsibilities, and relationships within the ICF/IID; and
  2. Including the name and, if applicable, the license or certification credential of each individual shown on the organizational chart.
- D.** An administrator shall ensure that, if a personnel member provides services that require a license under A.R.S. Title 32 or 36, the personnel member is licensed under A.R.S. Title 32 or 36, as applicable.
- E.** An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.
- F.** An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the ICF/IID, and
  2. As specified in R9-10-113.
- G.** An administrator shall ensure that:
1. The types and numbers of nurses or therapists required according to the acuity plan in R9-10-503(L) are present in each unit in the ICF/IID;
  2. Documentation of the nurses or therapists present on the ICF/IID's premises each day is maintained and includes:
    - a. The date;
    - b. The number of residents;
    - c. The name, license or certification credential, and assigned duties of each nurse or therapist who worked that day; and
    - d. The actual number of hours each nurse or therapist worked that day; and
  3. The documentation of nurses or therapists required in subsection (G)(2) is maintained for at least 12 months after the date of the documentation.
- H.** An administrator shall ensure that a personnel member is:
1. On duty, on the premises, awake, and able to respond, according to policies and procedures, to injuries, symptoms of illness, or fire or other emergencies on the premises if the ICF/IID provides services to:
    - a. More than 16 residents;
    - b. A resident who has a nursing care plan or medical care plan; or

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- c. A resident who requires additional supervision because the resident:
      - i. Is aggressive,
      - ii. May cause harm to self or others, or
      - iii. May attempt an unauthorized absence; and
  - 2. On duty, on the premises, and able to respond, according to policies and procedures, to injuries, symptoms of illness, or fire or other emergencies on the premises if:
    - a. The ICF/IID provides services to 16 or fewer residents, and
    - b. None of the residents has a nursing care plan or medical care plan or requires additional supervision according to subsection (H)(1)(c).
- I. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
  - 1. The individual's name, date of birth, and contact telephone number;
  - 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  - 3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's compliance with the requirements in A.R.S. § 36-411;
    - d. The ICF/IID's check on the individual in the adult protective services registry established according to A.R.S. § 46-459;
    - e. Orientation and in-service education as required by policies and procedures;
    - f. Training in preventing, recognizing, and reporting abuse or neglect, required according to R9-10-503(C)(1)(d)(i);
    - g. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - h. The individual's qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-515;
    - i. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-503(C)(1)(g);
    - j. First aid training, if required for the individual according to this Article or policies and procedures; and

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- k. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).

**J.** An administrator shall ensure that personnel records are:

- 1. Maintained:
  - a. Throughout the individual's period of providing services in or for the ICF/IID, and
  - b. For at least 24 months after the last date the individual provided services in or for the ICF/IID; and
- 2. For a personnel member who has not provided active treatment or other physical health services or behavioral care at or for the ICF/IID during the previous 12 months, provided to the Department within 72 hours after the Department's request.

**K.** An administrator shall ensure that:

- 1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
- 2. A personnel member completes orientation before providing active treatment or other physical health services or behavioral care;
- 3. An individual's orientation is documented, to include:
  - a. The individual's name,
  - b. The date of the orientation, and
  - c. The subject or topics covered in the orientation;
- 4. A plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
- 5. A personnel member's in-service education is documented, to include:
  - a. The personnel member's name,
  - b. The date of the training, and
  - c. The subject or topics covered in the training; and
- 6. A work schedule of each personnel member is developed and maintained at the ICF/IID for at least 12 months after the date of the work schedule.

**L.** An administrator shall designate a qualified individual to provide:

- 1. Social services, and
- 2. Recreational activities.

**R9-10-507. Admission**

An administrator shall ensure that:

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1. A resident is admitted only:
  - a. On a physician's order;
  - b. If the resident has a developmental disability or cognitive disability, as defined in A.R.S. § 36-551;
  - c. If the resident's placement evaluation indicates that the resident's needs can be met by the ICF/IID; and
  - d. Except when the resident's placement evaluation states that the resident would benefit from being part of a group that includes residents of different ages, developmental levels, or social needs, if the resident can be assigned to a room or unit within the ICF/IID with other residents of similar ages, developmental levels, or social needs;
2. The physician's admitting order or placement evaluation documentation includes the active treatment or other physical health services or behavioral care required to meet the immediate needs of a resident, such as habilitation services, medication, and food services;
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment on a resident to determine the resident's acuity and ensure the resident's immediate needs are met;
4. A resident's needs do not exceed the medical services, rehabilitation services, and nursing services available at the ICF/IID as established in the ICF/IID's scope of services;
5. A resident is assigned to a unit in the ICF/IID based, as applicable, on the patient's:
  - a. Documented diagnosis,
  - b. Treatment needs,
  - c. Developmental level,
  - d. Social skills,
  - e. Verbal skills, and
  - f. Acuity;
6. A resident does not share any space, participate in any activity or treatment, or verbally or physically interact with any other resident that, based on the other resident's documented diagnosis, treatment needs, developmental level, social skills, verbal skills, and personal history, may present a threat to the resident's health and safety;
7. Within 30 calendar days before admission or 10 working days after admission, a medical

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history and physical examination is completed on a resident by:

- a. A physician, or
  - b. A physician assistant or a registered nurse practitioner designated by the attending physician;
8. Compliance with the requirements in subsection (7) is documented in the resident's medical record;
9. Except as specified in subsection (10), a resident provides evidence of freedom from infectious tuberculosis:
- a. Before or within seven calendar days after the resident's admission, and
  - b. As specified in R9-10-113; and
10. A resident who transfers from an ICF/IID or nursing care institution to the ICF/IID is not required to be rescreened for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner as specified in R9-10-113 if:
- a. Fewer than 12 months have passed since the resident was screened for tuberculosis or since the date of the written statement, and
  - b. The documentation of freedom from infectious tuberculosis required in subsection (A)(9) accompanies the resident at the time of transfer.

**R9-10-508. Transfer; Discharge**

- A.** An administrator, in coordination with the Arizona Department of Economic Security, Division of Developmental Disabilities, shall ensure that:
1. A resident is transferred or discharged if:
    - a. The ICF/IID is not authorized or not able to meet the needs of the resident, or
    - b. The resident's behavior is a threat to the health or safety of the resident or other individuals at the ICF/IID; and
  2. Documentation of a resident's transfer or discharge includes:
    - a. The date of the transfer or discharge;
    - b. The reason for the transfer or discharge;
    - c. A 30-day written notice except:
      - i. In an emergency, or
      - ii. If the resident no longer requires rehabilitation services or habilitation services as determined by a physician or the physician's designee;
    - d. A notation by a physician or the physician's designee if the transfer or discharge

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is due to any of the reasons listed in subsection (A)(1); and

- e. If applicable, actions taken by a personnel member to protect the resident or other individuals if the resident's behavior is a threat to the health and safety of the resident or other individuals in the ICF/IID and beyond the ICF/IID's scope of services.

**B.** Except for a transfer of a resident due to an emergency, an administrator shall ensure that:

1. A qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse coordinates the transfer and the services provided to the resident;
2. According to policies and procedures:
  - a. An evaluation of the resident is conducted before the transfer;
  - b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
  - c. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
  - a. Communication with an individual at a receiving health care institution;
  - b. The date and time of the transfer;
  - c. The mode of transportation; and
  - d. If applicable, the name of the personnel member accompanying the resident during a transfer.

**C.** Except in an emergency, a qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse shall ensure that before a resident is discharged:

1. Written follow-up instructions are developed with the resident or the resident's representative that include:
  - a. Information necessary to meet the resident's need for medical services and nursing services; and
  - b. The state long-term care ombudsman's name, address, and telephone number;
2. A copy of the written follow-up instructions is provided to the resident or the resident's representative; and
3. A discharge summary:
  - a. Is developed by a qualified intellectual disabilities professional or, if the resident

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has a nursing care plan or medical care plan, a registered nurse;

- b. Authenticated by the resident's attending physician or designee; and
- c. Includes:
  - i. The resident's need for rehabilitation services or habilitation services at the time of transfer or discharge;
  - ii. The resident's need for medical services or nursing services;
  - iii. The resident's developmental, behavioral, social, and nutritional status;
  - iv. The resident's medical and psychosocial history;
  - v. The date of the discharge; and
  - vi. The location of the resident after discharge.

**R9-10-509. Transport**

- A.** Except as provided in subsection (B) and (C), an administrator shall ensure that:
  - 1. A personnel member authorized by policies and procedures coordinates the transport and the services provided to the resident;
  - 2. According to policies and procedures:
    - a. An evaluation of the resident is conducted before and after the transport,
    - b. Information from the resident's medical record is provided to a receiving health care institution, and
    - c. A personnel member explains risks and benefits of the transport to the resident or the resident's representative; and
  - 3. Documentation in the resident's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transport;
    - c. The mode of transportation; and
    - d. If applicable, the name of the personnel member accompanying the resident during a transport.
- B.** If the transport of a resident is to provide the resident with rehabilitation services or habilitation services off the premises, an administrator shall ensure that:
  - 1. The rehabilitation services or habilitation services are included in the resident's individual program plan,
  - 2. A qualified intellectual disabilities professional coordinates the transport and the services provided to the resident, and
  - 3. The resident is transported according to R9-10-510(A).

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- C. Subsection (A) does not apply to:
1. Except as provided in subsection (B), transportation according to R9-10-510 to a location other than a licensed health care institution;
  2. Transportation provided for a resident by the resident or the resident's representative;
  3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative; or
  4. A transport to another licensed health care institution in an emergency.

**R9-10-510. Transportation; Resident Outings**

- A. An administrator of an ICF/IID that uses a vehicle owned or leased by the ICF/IID to provide transportation to a resident shall ensure that:
1. The vehicle:
    - a. Is safe and in good repair,
    - b. Contains a first aid kit,
    - c. Contains drinking water sufficient to meet the needs of each resident present in the vehicle, and
    - d. Contains a working heating and air conditioning system;
  2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
  3. A driver of the vehicle:
    - a. Is 21 years of age or older;
    - b. Has a valid driver license;
    - c. Operates the vehicle in a manner that does not endanger a resident in the vehicle;
    - d. Does not leave in the vehicle an unattended:
      - i. Child;
      - ii. Resident who may be a threat to the health, safety, or welfare of the resident or another individual; or
      - iii. Resident who is incapable of independent exit from the vehicle; and
    - e. Ensures the safe and hazard-free loading and unloading of residents; and
  4. Transportation safety is maintained as follows:
    - a. An individual in the vehicle is sitting in a seat, which may include the seat of a wheel chair, and wearing a working seat belt while the vehicle is in motion; and
    - b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a resident's body.

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- B.** An administrator shall ensure that an outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each resident participating in the outing.
- C.** An administrator shall ensure that:
1. Except when only one resident is participating in an outing, at least two personnel members are present on the outing;
  2. In addition to the personnel members required in subsection (C)(1), a sufficient number of personnel members are present on an outing to ensure the health and safety of a resident on the outing;
  3. Each personnel member on the outing has documentation of current training in cardiopulmonary resuscitation according to R9-10-503(C)(1)(g) and first aid training;
  4. Documentation is developed before an outing that includes:
    - a. The name of each resident participating in the outing;
    - b. A description of the outing;
    - c. The date of the outing;
    - d. The anticipated departure and return times;
    - e. The name, address, and, if available, telephone number of the outing destination; and
    - f. If applicable, the license plate number of a vehicle used to provide transportation for the outing;
  5. The documentation described in subsection (C)(4) is updated to include the actual departure and return times and is maintained for at least 12 months after the date of the outing; and
  6. Emergency information for a resident participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:
    - a. The resident's name;
    - b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the resident during the anticipated duration of the outing;
    - c. The resident's allergies; and
    - d. The name and telephone number of a designated individual, who is present on the ICF/IID's premises, to notify in case of an emergency.

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**R9-10-511. Resident Rights**

- A.** An administrator shall ensure that:
1. The requirements in subsection (B) and the resident rights in subsection (C) are conspicuously posted on the premises;
  2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C); and
  3. Policies and procedures include:
    - a. How and when a resident or the resident's representative is informed of resident rights in subsection (C), and
    - b. Where resident rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:
1. A resident has privacy in:
    - a. Treatment,
    - b. Bathing and toileting,
    - c. Room accommodations, and
    - d. Visiting or meeting with another resident or an individual;
  2. A resident is treated with dignity, respect, and consideration;
  3. A resident is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Except as allowed in R9-10-515, seclusion or restraint;
    - i. Retaliation for submitting a complaint to the Department or another entity;
    - j. Misappropriation of personal and private property by an ICF/IID's personnel members, employees, volunteers, or students; or
    - k. Segregation solely on the basis of the resident's disability; and
  4. A resident or the resident's representative:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent for treatment before treatment is initiated;

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- c. Except in an emergency, is informed of proposed alternatives to psychotropic medication and the associated risks and possible complications of the psychotropic medication;
- d. Is informed of the following:
  - i. The health care institution's policy on health care directives, and
  - ii. The resident complaint process;
- e. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when admitted to an ICF/IID for identification and administrative purposes;
- f. May manage the resident's financial affairs;
- g. Has access to and may communicate with any individual, organization, or agency;
- h. Except as provided in the resident's individual program plan, has privacy:
  - i. In interactions with other residents or visitors to the ICF/IID,
  - ii. In the resident's mail, and
  - iii. For telephone calls made by or to the resident;
- i. May review the ICF/IID's current license survey report and, if applicable, plan of correction in effect;
- j. May review the resident's financial records within two working days and medical record within one working day after the resident's or the resident's representative's request;
- k. May obtain a copy of the resident's financial records and medical record within two working days after the resident's request and in compliance with A.R.S. § 12-2295;
- l. Except as otherwise permitted by law, consents, in writing, to the release of information in the resident's:
  - i. Medical record, and
  - ii. Financial records;
- m. May select a pharmacy of choice if the pharmacy complies with policies and procedures and does not pose a risk to the resident;
- n. Is informed of the method for contacting the resident's attending physician;
- o. Is informed of the resident's overall physical and psychosocial well-being, as determined by the resident's comprehensive assessment;

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- p. Is provided with a copy of those sections of the resident's medical record that are required for continuity of care free of charge, according to A.R.S. § 12-2295, if the resident is transferred or discharged; and
  - q. Except in the event of an emergency, is informed orally or in writing before the ICF/IID makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical record.
- C. In addition to the rights in A.R.S. § 36-551.01, a resident has the following rights:
- 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  - 2. To receive treatment that supports and respects the resident's individuality, choices, strengths, and abilities;
  - 3. To choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
  - 4. To participate in social, religious, political, and community activities that do not interfere with other residents;
  - 5. To retain personal possessions including furnishings and clothing as space permits unless use of the personal possession infringes on the rights or health and safety of other residents;
  - 6. To share a room with the resident's spouse if space is available and the spouse consents;
  - 7. To receive a referral to another health care institution if the ICF/IID is not authorized or not able to provide active treatment or other physical health services or behavioral care needed by the resident;
  - 8. To participate or have the resident's representative participate in the development of the resident's individual program plan or decisions concerning treatment;
  - 9. To participate or refuse to participate in research or experimental treatment; and
  - 10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

**R9-10-512. Medical Records**

- A. An administrator shall ensure that:
- 1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
  - 2. An entry in a resident's medical record is:
    - a. Recorded only by an individual authorized by policies and procedures to make

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- the entry;
- b. Dated, legible, and authenticated; and
- c. Not changed to make the initial entry illegible;
- 3. An order is:
  - a. Dated when the order is entered in the resident's medical record and includes the time of the order;
  - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
  - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
- 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
- 5. A resident's medical record is available to an individual:
  - a. Authorized to access the resident's medical record according to policies and procedures;
  - b. If the individual is not authorized to access the resident's medical record according to policies and procedures, with the written consent of the resident or the resident's representative; or
  - c. As permitted by law; and
- 6. A resident's medical record is protected from loss, damage, or unauthorized use.
- B.** If an ICF/IID maintains residents' medical records electronically, an administrator shall ensure that:
  - 1. Safeguards exist to prevent unauthorized access, and
  - 2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a resident's medical record contains:
  - 1. Resident information that includes:
    - a. The resident's name;
    - b. The resident's date of birth; and
    - c. Any known allergies, including medication allergies;
  - 2. The admission date and, if applicable, the date of discharge;
  - 3. The admitting diagnosis or presenting symptoms;

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4. Documentation of the resident's placement evaluation;
5. Documentation of general consent and, if applicable, informed consent;
6. If applicable, the name and contact information of the resident's representative and:
  - a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
  - b. If the resident's representative:
    - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
    - ii. Is a legal guardian, a copy of the court order establishing guardianship;
7. The name and contact information of an individual to be contacted under R9-10-503(I);
8. Documentation of the initial assessment required in R9-10-507(3) to determine acuity;
9. The medical history and physical examination required in R9-10-516(A)(4);
10. A copy of the resident's living will or other health care directive, if applicable;
11. The name and telephone number of the resident's attending physician;
12. Orders;
13. Documentation of the resident's comprehensive assessment;
14. Individual program plans, including nursing care plans or medical care plans, if applicable;
15. Documentation of active treatment and other physical health services or behavioral care provided to the resident;
16. Progress notes, including data needed to evaluate the effectiveness of the methods, schedule, and strategies being used to accomplish the goals in the resident's individual program plan;
17. If applicable, documentation of restraint or seclusion;
18. If applicable, documentation of any actions other than restraint or seclusion taken to control or address the resident's behavior to prevent harm to the resident or another individual or to improve the resident's social interactions;
19. If applicable, documentation that evacuation from the ICF/IID would cause harm to the resident;
20. The disposition of the resident after discharge;
21. The discharge plan;

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22. The discharge summary;
23. Transfer documentation;
24. If applicable:
  - a. A laboratory report,
  - b. A radiologic report,
  - c. A diagnostic report, and
  - d. A consultation report;
25. Documentation of freedom from infectious tuberculosis required in R9-10-507(10);
26. Documentation of a medication administered to the resident that includes:
  - a. The date and time of administration;
  - b. The name, strength, dosage, and route of administration;
  - c. The type of vaccine, if applicable;
  - d. For a medication administered for pain on a PRN basis:
    - i. An evaluation of the resident's pain before administering the medication,  
and
    - ii. The effect of the medication administered;
  - e. For a psychotropic medication administered on a PRN basis:
    - i. An evaluation of the resident's symptoms before administering the  
psychotropic medication, and
    - ii. The effect of the psychotropic medication administered;
  - f. The identification, signature, and professional designation of the individual  
administering the medication; and
  - g. Any adverse reaction a resident has to the medication; and
27. If applicable, a copy of written notices, including follow-up instructions, provided to the  
resident or the resident's representative.

**R9-10-513. Rehabilitation Services and Habilitation Services**

- A. Except as provided in subsection (D), an administrator shall ensure that:
  1. Personnel members are available to provide the following rehabilitation services:
    - a. Physical therapy, as defined in A.R.S. § 32-2001;
    - b. Occupational therapy, A.R.S. § 32-3401;
    - c. Psychological service, as defined in A.R.S. § 32-2061;
    - d. Speech-language pathology, as defined in A.R.S. § 36-1901; and

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- e. Audiology, as defined in A.R.S. § 36-1901;
  2. Rehabilitation services are provided:
    - a. Under the direction of a qualified intellectual disabilities professional according to policies and procedures, and
    - b. According to an order;
  3. A resident receives the rehabilitation services required in the resident's individual program plan;
  4. Unless otherwise required in the resident's individual program plan:
    - a. A resident does not remain in bed or in the resident's bedroom;
    - b. If the resident is not able to independently move from place to place, even with the use of an assistive device, the resident is moved from place to place in the ICF/IID; and
    - c. A resident receiving rehabilitation services is encouraged to participate in activities that are planned according to subsection (C)(2) and are appropriate to objectives in the resident's individual program plan;
  5. A qualified intellectual disabilities professional reviews the rehabilitation services provided to a resident and revises the frequency, duration, method, or type of rehabilitation services being provided in the resident's individual program plan:
    - a. As necessary, if the resident is losing skills or failing to progress; or
    - b. If a goal in the resident's individual program plan has been accomplished and a new objective is to be initiated; and
  6. The medical record of a resident receiving rehabilitation services includes:
    - a. An order for rehabilitation services that includes the name of the ordering individual and a referring diagnosis;
    - b. The resident's individual program plan, including all updates;
    - c. The rehabilitation services provided;
    - d. The resident's response to the rehabilitation services; and
    - e. The authentication of the individual providing the rehabilitation services.
- B.** Except as provided in subsection (D), an administrator shall ensure that:
1. Personnel members are available to provide a resident with habilitation services required in the resident's individual program plan;
  2. A personnel member is only assigned to provide the habilitation services the personnel member has the documented skills and knowledge to perform;

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3. A resident receives the habilitation services in the resident's individual program plan;
  4. If applicable, a personnel member:
    - a. Suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living; and
    - b. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's individual program plan;
  5. A resident receiving habilitation services is encouraged to participate in activities of the resident's choosing that are planned according to subsection (C)(2); and
  6. The medical record of a resident receiving habilitation services includes:
    - a. The resident's individual program plan, including all updates;
    - b. The habilitation services provided;
    - c. The resident's response to the habilitation services; and
    - d. The authentication of the individual providing the habilitation services.
- C.** An administrator shall ensure that:
1. Multiple media sources, such as daily newspapers, current magazines, internet sources, and a variety of reading materials, are available and accessible to a resident to maintain the resident's continued awareness of current news, social events, and other noteworthy information;
  2. Daily social or recreational activities are planned according to residents' preferences, needs, and abilities;
  3. A calendar of planned activities is:
    - a. Prepared at least one week in advance of the date the activity is provided,
    - b. Posted in a location that is easily seen by residents,
    - c. Updated as necessary to reflect substitutions in the activities provided, and
    - d. Maintained for at least 12 months after the last scheduled activity;
  4. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity on the premises;
  5. Outings are provided according to R9-10-510(B) and (C); and
  6. If necessary and unless otherwise required in the resident's individual program plan, a resident is assisted to participate in outings and other opportunities to leave the premises of the ICF/IID.
- D.** An administrator is not required to ensure that personnel members providing rehabilitation services or habilitation services are on the premises if no resident of the ICF/IID is on the

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premises because the residents are:

1. Receiving rehabilitation services off the premises,
2. Receiving habilitation services off the premises,
3. Participating in an outing, or
4. Otherwise absent from the ICF/IID.

**R9-10-514. Individual Program Plan**

**A.** An administrator shall ensure that:

1. A comprehensive assessment of a resident:
  - a. Is conducted or coordinated by a qualified intellectual disabilities professional, in collaboration with an interdisciplinary team that includes:
    - i. The resident's attending physician or designee;
    - ii. A registered nurse;
    - iii. If the resident is receiving medications as part of active treatment, a pharmacist; and
    - iv. Personnel members qualified to provide each type of rehabilitation services identified in a placement evaluation or the initial assessment required in R9-10-507(3);
  - b. Is completed for the resident within 30 calendar days after the resident's admission to an ICF/IID;
  - c. Is updated:
    - i. No later than 12 months after the date of the resident's last comprehensive assessment, and
    - ii. When the resident experiences a significant change;
  - d. Includes the following information for the resident:
    - i. Identifying information;
    - ii. An evaluation of the resident's hearing, speech, and vision;
    - iii. An evaluation of the resident's ability to understand and recall information;
    - iv. An evaluation of the resident's mental status;
    - v. Whether the resident demonstrates inappropriate behavior;
    - vi. Preferences for customary routine and activities;
    - vii. An evaluation of the resident's ability to perform activities of daily living;

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- viii. Need for a mobility device;
- ix. An evaluation of the resident's ability to control the resident's bladder and bowels;
- x. Any diagnosis that impacts rehabilitation services or other physical health services or behavioral care that the resident may require;
- xi. Any medical conditions that impact the resident's functional status, quality of life, or need for nursing services;
- xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;
- xiii. An evaluation of the resident's oral and dental status;
- xiv. An evaluation of the condition of the resident's skin;
- xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
- xvi. Identification of any treatment or medication ordered for the resident;
- xvii. Identification of interventions that may support the resident towards independence;
- xviii. Identification of any assistive devices needed by the resident;
- xix. Identification of the active treatment needed by the resident, including active treatment not provided by the ICF/IID;
- xx. Identification of measurable goals and behavioral objective for the active treatment, in priority order, with time limits for attainment;
- xxi. Identification of the methods, schedule, and strategies to accomplish the goals in subsection (A)(1)(d)(xviii), including the personnel member responsible;
- xxii. Evaluation procedures for determining if the methods and strategies in subsection (A)(1)(d)(xix) are working, including the type of data required and frequency of collection;
- xxiii. Whether any restraints have been used for the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
- xxiv. If the resident demonstrates inappropriate behavior, as reported according to subsection (A)(1)(d)(v), identification of the methods,

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- schedule, and strategies for replacement of the inappropriate behavior with appropriate behavioral expressions, including the hierarchy for use;
- xxv. If restraint or seclusion is included in subsection (A)(1)(d)(xxiv), the specific restraints or conditions of seclusion that may be used because of the resident's inappropriate behavior;
  - xxvi. A description of the resident or resident's representative's participation in the comprehensive assessment;
  - xxvii. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;
  - xxviii. Potential for rehabilitation, including the resident's strengths and specific developmental or behavioral health needs; and
  - xxix. Potential for discharge;
- e. Is signed and dated by the qualified intellectual disabilities professional who conducts or coordinates the comprehensive assessment or review; and
  - f. Is used to determine or update the resident's acuity;
- 2. If any of the conditions in subsection (A)(1)(d)(v) are answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and individual program plan to ensure that the resident's needs for behavioral care are being met;
  - 3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to an ICF/IID unless a physician, an individual designated by the physician, a qualified intellectual disabilities professional, or a registered nurse determines the resident has a significant change in condition; and
  - 4. A resident's comprehensive assessment is reviewed at least once every three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition by:
    - a. A qualified intellectual disabilities professional; and
    - b. If the resident has a nursing care plan or medical care plan, a registered nurse.
- B.** An administrator shall ensure that an individual program plan for a resident:
- 1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);
  - 2. Includes the acuity of the resident;
  - 3. Is reviewed at least annually by the interdisciplinary team required in subsection

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(A)(1)(a) and revised based on any change to the resident's comprehensive assessment;  
and

4. Ensures that a resident is provided rehabilitation services and other physical health services or behavioral care that:
  - a. Address any medical condition or behavioral care issue identified in the resident's comprehensive assessment, and
  - b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

**R9-10-515. Seclusion; Restraint**

**A.** An administrator shall ensure that:

1. An ICF/IID's policies and procedures for managing a resident's inappropriate behavior, as described in R9-10-503(C)(2)(g) are reviewed, approved, and monitored through the quality management process in R9-10-504; and
2. Restraint is provided according to the requirements in subsection (C).

**B.** An administrator of an ICF/IID authorized to provide seclusion shall ensure that:

1. Seclusion is provided according to the requirements in subsection (C);
2. If a resident is placed in seclusion, the room used for seclusion:
  - a. Is approved for use as a seclusion room by the Department;
  - b. Is not used as a resident's bedroom or a sleeping area;
  - c. Allows full view of the resident in all areas of the room;
  - d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
  - e. Contains at least 60 square feet of floor space; and
  - f. Except as provided in subsection (B)(3), contains a non-adjustable bed that:
    - i. Consists of a mattress on a solid platform that is:
      - (1) Constructed of a durable, non-hazardous material; and
      - (2) Raised off of the floor;
    - ii. Does not have wire springs or a storage drawer; and
    - iii. Is securely anchored in place;
3. If a room used for seclusion does not contain a non-adjustable bed required in subsection (B)(2)(f):
  - a. A piece of equipment is available that:
    - i. Is commercially manufactured to safely and humanely restrain a resident's body;

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- ii. Provides support to the trunk and head of a resident's body;
      - iii. Provides restraint to the trunk of a resident's body;
      - iv. Is able to restrict movement of a resident's arms, legs, body, and head;
      - v. Allows a resident's body to recline; and
      - vi. Does not inflict harm on a resident's body; and
    - b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (B)(3)(a) is maintained; and
  - 4. A seclusion room may be used for services or activities other than seclusion if:
    - a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
    - b. No permanent equipment other than the bed required in subsection (B)(2)(f) is in the room;
    - c. Policies and procedures:
      - i. Delineate which services or activities other than seclusion may be provided in the room,
      - ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
      - iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
    - d. The sign required in subsection (B)(4)(a) and equipment and supplies in the room, other than the bed required in subsection (B)(2)(f), are removed before use as a seclusion room.
- C. An administrator shall ensure that:
  - 1. Policies and procedures for providing restraint or seclusion are established, documented, and implemented to protect the health and safety of a resident that:
    - a. Establish the process for resident assessment, including identification of a resident's medical conditions and criteria for the on-going monitoring of any identified medical condition;
    - b. Identify each type of restraint or seclusion used and include for each type of restraint or seclusion used:
      - i. The qualifications of a personnel member who can:
        - (1) Order the restraint or seclusion,
        - (2) Place a resident in the restraint or seclusion,

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- (3) Monitor a resident in the restraint or seclusion,
      - (4) Evaluate a resident's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
      - (5) Renew the order for restraint or seclusion;
    - ii. On-going training requirements for a personnel member who has direct resident contact while the resident is in a restraint or seclusion; and
    - iii. Criteria for monitoring and assessing a resident including:
      - (1) Frequencies of monitoring and assessment based on a resident's medical condition and risks associated with the specific restraint or seclusion;
      - (2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
      - (3) Assessment content, which may include, depending on a resident's condition, the resident's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
      - (4) If a mechanical restraint is used, how often the mechanical restraint is loosened; and
      - (5) A process for meeting a resident's nutritional needs and elimination needs;
  - c. Establish the criteria and procedures for renewing an order for restraint or seclusion;
  - d. Establish procedures for internal review of the use of restraint or seclusion; and
  - e. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
2. An order for restraint or seclusion is:
  - a. Obtained from a physician or registered nurse practitioner, and
  - b. Not written as a standing order or on an as-needed basis;
3. Restraint or seclusion is:
  - a. Not used as a means of coercion, discipline, convenience, or retaliation;

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- b. Only used when all of the following conditions are met:
  - i. Except as provided in subsection (C)(4), after obtaining an order for the restraint or seclusion;
  - ii. For the management of a resident's aggressive, violent, or self-destructive behavior;
  - iii. When less restrictive interventions have been determined to be ineffective; and
  - iv. To ensure the immediate physical safety of the resident, to prevent imminent harm to the resident or another individual, or to stop physical harm to another individual; and
- c. Discontinued at the earliest possible time;
- 4. If as a result of a resident's aggressive, violent, or self-destructive behavior, harm to the resident or another individual is imminent or the resident or another individual is being physically harmed, a personnel member:
  - a. May initiate an emergency application of restraint or seclusion for the resident before obtaining an order for the restraint or seclusion, and
  - b. Obtains an order for the restraint or seclusion of the resident during the emergency application of the restraint or seclusion;
- 5. An order for restraint or seclusion includes:
  - a. The name of the physician or registered nurse practitioner ordering the restraint or seclusion;
  - b. The date and time that the restraint or seclusion was ordered;
  - c. The specific restraint or seclusion ordered;
  - d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
  - e. The specific criteria for release from restraint or seclusion without an additional order; and
  - f. The maximum duration authorized for the restraint or seclusion;
- 6. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed three continuous hours;
- 7. If an order for restraint or seclusion of a resident is not provided by the resident's attending physician, the resident's attending physician is notified as soon as possible;
- 8. A medical practitioner or personnel member does not participate in restraint or seclusion,

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assess or monitor a resident during restraint or seclusion, or evaluate a resident after restraint or seclusion, and a physician or registered nurse practitioner does not order restraint or seclusion, until the medical practitioner or personnel member, completes education and training that:

- a. Includes:
    - i. Techniques to identify medical practitioner, personnel member, and resident behaviors, events, and environmental factors that may trigger circumstances that require restraint or seclusion;
    - ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
    - iii. Techniques for identifying the least restrictive intervention based on an assessment of the resident's medical or behavioral health condition;
    - iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a resident who is restrained or secluded;
    - v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
    - vi. Monitoring and assessing a resident while the resident is in restraint or seclusion according to policies and procedures; and
    - vii. Except for the medical practitioner, training exercises in which the personnel member successfully demonstrates the techniques that the medical practitioner or personnel member has learned for managing emergency situations; and
  - b. Is provided by individuals qualified according to policies and procedures;
9. When a resident is placed in restraint or seclusion:
- a. The restraint or seclusion is conducted according to policies and procedures;
  - b. The restraint or seclusion is proportionate and appropriate to the severity of the resident's behavior and the resident's:
    - i. Chronological and developmental age;
    - ii. Size;
    - iii. Gender;
    - iv. Physical condition;

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- v. Medical condition;
  - vi. Psychiatric condition; and
  - vii. Personal history, including any history of physical or sexual abuse;
  - c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
  - d. The resident is monitored and assessed according to policies and procedures;
  - e. A physician or registered nurse assesses the resident within one hour after the resident is placed in the restraint or seclusion and determines:
    - i. The resident's current behavior,
    - ii. The resident's reaction to the restraint or seclusion used,
    - iii. The resident's medical and behavioral condition, and
    - iv. Whether to continue or terminate the restraint or seclusion;
  - f. The resident is given the opportunity:
    - i. To eat during mealtime, and
    - ii. To use the toilet; and
  - g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;
10. A medical practitioner or personnel member documents the following information in a resident's medical record before the end of the shift in which the resident is placed in restraint or seclusion or, if the resident's restraint or seclusion does not end during the shift in which it began, during the shift in which the resident's restraint or seclusion ends:
- a. The emergency situation that required the resident to be restrained or put in seclusion,
  - b. The times the resident's restraint or seclusion actually began and ended,
  - c. The monitoring required in subsection (C)(9)(d),
  - d. The time of the assessment required in subsection (C)(9)(e),
  - e. The names of the medical practitioners and personnel members with direct resident contact while the resident was in the restraint or seclusion,
  - f. The times the resident was given the opportunity to eat or use the toilet according to subsection (C)(9)(f), and
  - g. The resident evaluation required in subsection (C)(12);
11. If an emergency situation continues beyond the time limit of an order for restraint or

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seclusion, the order is renewed according to policies and procedures that include:

- a. The specific criteria for release from restraint or seclusion without an additional order, and
  - b. The maximum duration authorized for the restraint or seclusion; and
12. A resident is evaluated after restraint or seclusion is no longer being used for the resident.

**R9-10-516. Physical Health Services**

**A.** An administrator shall ensure that:

1. A resident has an attending physician;
2. An attending physician is available 24 hours a day;
3. An attending physician designates a physician who is available when the attending physician is not available;
4. A physical examination is performed on a resident by a physician or by a physician assistant or registered nurse practitioner designated by the resident's attending physician:
  - a. If indicated, based on the resident's placement evaluation or comprehensive assessment; and
  - b. At least once every 12 months after the date of admission, including an assessment of the acuity of the resident's medical condition;
5. If a resident's physical examination, placement evaluation, or comprehensive assessment indicates a need for:
  - a. Intermittent nursing services, the resident's attending physician, in conjunction with the director of nursing, develops a nursing care plan of treatment for the resident, which is integrated into the resident's individual program plan; or
  - b. Continuous nursing services, the resident's attending physician, in conjunction with the director of nursing, develops a medical care plan of treatment for the resident, which is integrated into the resident's individual program plan; and
6. Vaccinations for influenza and pneumonia are available to each resident at least once every 12 months unless:
  - a. The attending physician provides documentation that the vaccination is medically contraindicated;
  - b. The resident or the resident's representative refuses the vaccination or vaccinations and documentation is maintained in the resident's medical record that the resident or the resident's representative has been informed of the risks and benefits of a vaccination refused; or

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- c. The resident or the resident's representative provides documentation that the resident received a pneumonia vaccination within the last five years or the current recommendation from the U.S. Department of Health and Human Services, Center for Disease Control and Prevention.

**B.** An administrator shall ensure that:

1. Nursing services are available 24 hours a day in an ICF/IID;
2. For an ICF/IID authorized to admit a resident requiring:
  - a. Continuous nursing services, a registered nurse is on the premises; or
  - b. Intermittent nursing services, a nurse is on the premises according to the schedule in a resident's nursing care plan; and
3. The director of nursing or an individual designated by the director of nursing participates in the quality management program.

**C.** A director of nursing shall ensure that:

1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on:
  - a. The acuity of the residents, and
  - b. The ICF/IID's scope of services;
2. Sufficient nursing personnel, as determined by the method in subsection (C)(1), are on the ICF/IID's premises to meet the needs of a resident for nursing services;
3. A registered nurse participates in the development, review, and updating of a resident's nursing care plan or medical care plan;
5. Personnel members providing direct care to a resident with a nursing care plan or medical care plan receive direction from a nurse;
6. At least once every three months, a nurse:
  - a. Assesses the health of a resident without a nursing care plan or medical care plan;
  - b. Documents the results in the resident's medical record; and
  - c. If the assessment indicates the need for physical health services or behavioral care, initiates action, according to policies and procedures, to address the resident's needs;
7. Nursing personnel provide education and training to:
  - a. Residents on hygiene and other behaviors that promote health; and
  - b. Personnel members on:
    - i. Detecting signs of illness or injury or significant changes in condition,

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- ii. First aid, and
    - iii. Basic skills for caring for residents;
  - 8. As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:
    - a. Is injured,
    - b. Is involved in an incident that requires medical services, or
    - c. Has a significant change in condition; and
  - 9. Only a medication required by an order is administered to a resident.
- D.** An administrator shall ensure that:
  - 1. Dental services are provided to a resident by an individual licensed as:
    - a. A dentist under A.R.S. Title 32, Chapter 11, Article 2; or
    - b. A dental hygienist under A.R.S. Title 32, Chapter 11, Article 4;
  - 2. If needed, based on a resident's initial assessment, a dentist or dental hygienist in subsection (D)(1) participates as part of an interdisciplinary team in the development of the resident's individual program plan;
  - 3. A resident is provided with a complete dental examination within one month after admission, unless the ICF/IID has documentation of the resident's dental examination completed within 12 months before admission;
  - 4. If a resident's dental examination indicates the resident needs dental treatment:
    - a. A dentist or dental hygienist in subsection (D)(1) participates as part of an interdisciplinary team in the review and updating of the resident's individual program plan, and
    - b. The resident is provided with dental treatment;
  - 5. A dental examination is performed by a dentist or dental hygienist in subsection (D)(1) on a resident at least once every 12 months and treatment is provided as needed;
  - 6. If needed, a resident is provided with emergency dental services;
  - 7. A resident is provided with education and training in oral hygiene; and
  - 8. A resident's medical record contains documentation of:
    - a. Each dental examination of the resident,
    - b. All dental treatment provided to the resident, and
    - c. The resident's education and training in oral hygiene.
- E.** An administrator shall ensure that:

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1. A resident's vision and hearing are assessed as part of the resident's comprehensive assessment and, if applicable, as part of the update of the comprehensive assessment; and
2. If an issue is identified with the resident's vision or hearing, the resident is provided, as applicable, with:
  - a. Treatment to address the identified issue, or
  - b. An assistive device to address an issue.

**R9-10-517. Behavioral Care**

**A.** An administrator shall ensure that:

1. A resident who receives behavioral care from the ICF/IID is evaluated by a behavioral health professional or medical practitioner:
  - a. Within 30 calendar days before the resident is admitted to the ICF/IID or before the resident begins receiving behavioral care, and
  - b. At least once every six months throughout the duration of the resident's need for behavioral care;
2. A behavioral health professional or medical practitioner:
  - a. Documents that the behavioral care needed by the resident is within the ICF/IID's scope of services, and
  - b. Includes measurable objectives for the behavioral care and the methods for meeting the objectives in the resident's individual program plan; and
3. The documentation in subsection (A)(2) is included in the resident's medical record.

**B.** If a resident of an ICF/IID requires behavioral health services provided by a behavioral health professional on an intermittent basis as part of behavioral care, an administrator shall ensure that:

1. The behavioral health services are provided by a behavioral health professional licensed or certified to provide the type of behavioral health services required by the resident; and
2. Except for a psychotropic drug used as a chemical restraint or administered according to an order from a court of competent jurisdiction, informed consent is obtained from a resident or the resident's representative for a psychotropic drug and documented in the resident's medical record before the psychotropic drug is administered to the resident.

**R9-10-518. Clinical Laboratory Services**

If clinical laboratory services are authorized to be provided on an ICF/IID's premises, an administrator shall ensure that:

1. Clinical laboratory services and pathology services are provided through a laboratory that

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- holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation, certificate of compliance, or certificate of waiver in subsection (1) is provided to the Department for review upon the Department's request;
  3. The ICF/IID:
    - a. Is able to provide the clinical laboratory services delineated in the ICF/IID's scope of services when needed by the residents,
    - b. Obtains specimens for the clinical laboratory services delineated in the ICF/IID's scope of services without transporting the residents from the ICF/IID's premises, and
    - c. Has the examination of the specimens performed by a clinical laboratory;
  4. Clinical laboratory and pathology test results are:
    - a. Available to the ordering physician:
      - i. Within 24 hours after the test is complete with results if the test is performed at a laboratory on the ICF/IID's premises, or
      - ii. Within 24 hours after the test result is received if the test is performed at a laboratory outside of the ICF/IID's premises; and
    - b. Documented in a resident's medical record;
  5. If a test result is obtained that indicates a resident may have an emergency medical condition, as established in policies and procedures, personnel notify:
    - a. The ordering physician,
    - b. A registered nurse in the resident's assigned unit,
    - c. The ICF/IID's administrator, or
    - d. The director of nursing;
  6. If a clinical laboratory report is completed on a resident, a copy of the report is included in the resident's medical record;
  7. If the ICF/IID provides blood or blood products, policies and procedures are established, documented, and implemented for:
    - a. Procuring, storing, transfusing, and disposing of blood or blood products;
    - b. Blood typing, antibody detection, and blood compatibility testing; and
    - c. Investigating transfusion adverse reactions that specify a process for review

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through the quality management program; and

8. Expired laboratory supplies are discarded according to policies and procedures.

**R9-10-519. Respiratory Care Services**

If respiratory care services are authorized to be provided on an ICF/IID's premises, an administrator shall ensure that:

1. Respiratory care services are provided under the direction of an attending physician;
2. Respiratory care services are provided according to an order that includes:
  - a. The resident's name;
  - b. The name and signature of the ordering individual;
  - c. The type, frequency, and, if applicable, duration of treatment;
  - d. The type and dosage of medication and diluent; and
  - e. The oxygen concentration or oxygen liter flow and method of administration;
3. Respiratory care services provided to a resident are documented in the resident's medical record and include:
  - a. The date and time of administration;
  - b. The type of respiratory care services provided;
  - c. The effect of the respiratory care services;
  - d. The resident's adverse reaction to the respiratory care services, if any; and
  - e. The authentication of the individual providing the respiratory care services; and
4. Any area or unit that performs blood gases or clinical laboratory tests complies with the requirements in R9-10-518.

**R9-10-520. Medication Services**

**A.** An administrator shall ensure that policies and procedures for medication services:

1. Include:
  - a. A process for providing information to a resident about medication prescribed for the resident including:
    - i. The prescribed medication's anticipated results,
    - ii. The prescribed medication's potential adverse reactions,
    - iii. The prescribed medication's potential side effects, and
    - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
  - b. Procedures for preventing, responding to, and reporting:
    - i. A medication error,

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- ii. An adverse response to a medication, or
      - iii. A medication overdose;
    - c. Procedures to ensure that a pharmacist reviews a resident's medications at least once every three months and provides documentation to the resident's attending physician and the director of nursing indicating potential medication problems such as incompatible or duplicative medications;
    - d. Procedures for documenting medication services; and
    - e. Procedures for assisting a resident in obtaining medication; and
  - 2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B.** An administrator shall ensure that:
- 1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a pharmacist;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a resident only as prescribed; and
    - d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record;
  - 2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
  - 3. A medication administered to a resident:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the resident's medical record; and
  - 4. If a psychotropic medication is administered to a resident, the psychotropic medication:
    - a. Is only administered to a resident for a diagnosed medical condition; and
    - b. Unless clinically contraindicated or otherwise ordered by an attending physician or the attending physician's designee, is gradually reduced in dosage while the resident is simultaneously provided with interventions such as behavior and environment modification in an effort to discontinue the psychotropic medication, unless a dose reduction is attempted and the resident displays behavior justifying the need for the psychotropic medication, and the attending

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physician documents the necessity for the continued use and dosage.

- C. If an ICF/IID provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A resident's medication is stored by the ICF/IID;
  2. The following assistance is provided to a resident:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the resident;
    - c. Observing the resident while the resident removes the medication from the container;
    - d. Verifying that the medication is taken as ordered by the resident's attending physician by confirming that:
      - i. The resident taking the medication is the individual stated on the medication container label,
      - ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from the resident's attending physician dated later than the date on the medication container label, and
      - iii. The resident is taking the medication at the time stated on the medication container label or according to an order from the resident's attending physician dated later than the date on the medication container label; or
    - e. Observing the resident while the resident takes the medication;
  3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by the resident's attending physician or registered nurse;
  4. Training for a personnel member, other than a physician, physician assistant, or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by the resident's attending physician, another physician, a physician assistant, or a registered nurse or an individual trained by a physician, physician assistant, or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and

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- iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
- 5. A personnel member, other than a physician, physician assistant, or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
- 6. Assistance in the self-administration of medication provided to a resident:
  - a. Is in compliance with an order, and
  - b. Is documented in the resident's medical record.
- D.** An administrator shall ensure that:
  - 1. A current drug reference guide is available for use by personnel members; and
  - 2. If pharmaceutical services are provided:
    - a. The pharmaceutical services are provided under the direction of a pharmacist;
    - b. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - c. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at an ICF/IID, an administrator shall ensure that:
  - 1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  - 2. Medication is stored according to the instructions on the medication container; and
  - 3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of residents who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the resident's attending physician or the physician who ordered the medication and the ICF/IID's director of nursing.

**R9-10-521. Infection Control**

An administrator shall ensure that:

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1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
  - a. A method to identify and document infections occurring at the ICF/IID;
  - b. Analysis of the types, causes, and spread of infections and communicable diseases at the ICF/IID;
  - c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the ICF/IID; and
  - d. Documentation of infection control activities including:
    - i. The collection and analysis of infection control data,
    - ii. The actions taken related to infections and communicable diseases, and
    - iii. Reports of communicable diseases to the governing authority and state and county health departments;
2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
3. Policies and procedures are established, documented, and implemented that cover:
  - a. Handling and disposal of biohazardous medical waste;
  - b. Sterilization, disinfection, and storage of medical equipment and supplies;
  - c. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
  - d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a resident;
  - e. Cleaning of a resident's bedroom, furniture, and bedding after the resident's discharge before the bedroom is reassigned to another resident;
  - f. Training of personnel members, employees, and volunteers in infection control practices; and
  - g. Work restrictions for a personnel member with a communicable disease or infected skin lesion;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Soiled linen and clothing are:
  - a. Collected in a manner to minimize or prevent contamination;
  - b. Bagged at the site of use; and

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- c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
- 6. A resident's personal laundry is washed separately from towels, sheets, and bedding; and
- 7. A personnel member, an employee, or a volunteer washes hands or uses a hand disinfection product after a resident contact and after handling soiled linen, soiled clothing, or potentially infectious material.

**R9-10-522. Food Services**

**A.** An administrator shall ensure that:

- 1. The ICF/IID has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
- 2. A copy of the ICF/IID's food establishment license or permit is maintained;
- 3. If the ICF/IID contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the ICF/IID:
  - a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the ICF/IID; and
  - b. The ICF/IID is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
- 4. A registered dietitian:
  - a. Participates as part of an interdisciplinary team for a resident requiring a modified or special diet,
  - b. Reviews a food menu before the food menu is used to ensure that a resident's nutritional needs are being met,
  - c. Documents the review of a food menu, and
  - d. Is available for consultation regarding a resident's nutritional needs; and
- 5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to ensure that the nutritional needs of a resident are met.

**B.** A registered dietitian or director of food services shall ensure that:

- 1. Food is prepared:
  - a. Using methods that conserve nutritional value, flavor, and appearance; and
  - b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
- 2. A food menu:
  - a. Is prepared at least one week in advance,

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- b. Includes the foods to be served on each day,
  - c. Is conspicuously posted at least one day before the first meal on the food menu will be served,
  - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
  - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
3. Meals and snacks for each day are planned and served using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2015.asp>;
4. A resident is provided:
  - a. A diet that meets the resident's nutritional needs as specified in the resident's comprehensive assessment and individual program plan;
  - b. Food served in sufficient quantities to meet the resident's nutritional needs and at an appropriate temperature;
  - c. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(4)(e);
  - d. The option to have a daily evening snack identified in subsection (B)(4)(e)(ii) or other snack; and
  - e. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
    - i. A resident group agrees; and
    - ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
5. A resident is provided with food substitutions of similar nutritional value if:
  - a. The resident refuses to eat the food served, or
  - b. The resident requests a substitution;
6. Recommendations and preferences are requested from a resident or the resident's representative for meal planning;
7. If food is used as a part of a program to manage a resident's inappropriate behavior:
  - a. A special diet is included as part of the resident's individual program plan, and
  - b. The special diet is reviewed and evaluated by a physician and a dietitian to ensure the special diet meets the resident's nutritional needs;

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8. Meals are served to residents at tables in a dining area and in a manner that allows the resident to eat from an upright position, unless otherwise specified in the resident's individual program plan or by an attending physician;
9. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils;
10. Personnel members supervise meals in dining areas to:
  - a. Direct a resident's self-help dining procedures,
  - b. Ensure a resident consumes enough food to meet the resident's nutritional needs, and
  - c. Ensure that a resident eats in a manner consistent with the resident's developmental level;
11. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair; and
12. Water is available and accessible to residents.

**R9-10-523. Emergency and Safety Standards**

- A. An administrator shall ensure that:
  1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
    - a. A floor plan of the facility showing emergency protection equipment, evacuation routes, and exits;
    - b. When, how, and where residents will be relocated, including:
      - i. Instructions for the evacuation or transfer of residents,
      - ii. Assigned responsibilities for each employee and personnel member, and
      - iii. A plan for continuing to provide services to meet a resident's needs;
    - c. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
    - d. A plan for back-up power and water supply;
    - e. A plan to ensure a resident's medications will be available to administer to the resident during a disaster;
    - f. A plan to ensure a resident is provided nursing services, rehabilitation services, and other services required by the resident during a disaster; and



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9. An evacuation path is conspicuously posted on each hallway of each floor of the ICF/IID.

**B.** An administrator shall ensure that, if an ICF/IID has:

1. More than 16 residents or a resident who has a medical care plan or whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident:

a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and is in working order; and

b. A sprinkler system is installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, and is in working order; and

2. Sixteen or fewer residents, none of whom have a medical care plan or whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident:

a. A fire alarm system and a sprinkler system meeting the requirements in subsection (B)(1) are installed and in working order; or

b. The ICF/IID has:

i. A fire extinguisher that is:

(1) Labeled as rated at least 2A-10-BC by the Underwriters Laboratories;

(2) Accessible to personnel members and inaccessible to residents;

(3) If a disposable fire extinguisher, replaced when its indicator reaches the red zone; and

(4) If a rechargeable fire extinguisher, is serviced at least once every 12 months, as documented by a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher; and

ii. Smoke detectors that are:

(1) Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;

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- (2) Either battery operated or, if hard-wired into the electrical system of the ICF/IID, has a back-up battery;
- (3) In working order; and
- (4) Tested at least once a month, with documentation of the test maintained for at least 12 months after the date of the test.

**C.** An administrator shall:

1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the fire inspection report, and
3. Maintain documentation of a current fire inspection.

**D.** An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.

**R9-10-524. Environmental Standards**

**A.** An administrator shall ensure that:

1. An ICF/IID's premises and equipment are:
  - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness and infection; and
  - b. Free from a condition or situation that may cause a resident or an individual to suffer physical injury;
2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
3. Equipment used to provide direct care is:
  - a. Maintained in working order;
  - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
  - c. Used according to the manufacturer's recommendations;
4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
5. Garbage and refuse are:
  - a. In areas used for food storage, food preparation, or food service, stored in a covered container lined with a plastic bag;
  - b. In areas not used for food storage, food preparation, or food service, stored:

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- i. According to the requirements in subsection (A)(5)(a), or
  - ii. In a paper-lined or plastic-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
- c. Removed from the premises at least once a week;
6. Heating and cooling systems maintain the ICF/IID at a temperature between 70° F and 84° F;
7. Common areas:
  - a. Are lighted to assure the safety of residents, and
  - b. Have lighting sufficient to allow personnel members to monitor resident activity;
8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
9. The temperature of the hot water does not exceed 120° F;
10. Linens are clean before use, without holes and stains, and not in need of repair;
11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the ICF/IID are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
13. Combustible or flammable liquids stored by the ICF/IID are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
14. If pets or animals are allowed in the ICF/IID, pets or animals are:
  - a. Controlled to prevent endangering the residents and to maintain sanitation;
  - b. Licensed consistent with local ordinances; and
  - c. For a dog or cat, vaccinated against rabies;
15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
  - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
  - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
  - c. Documentation of testing is retained for at least 12 months after the date of the test; and
16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.

**B.** An administrator shall ensure that:

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1. Smoking tobacco products are not permitted within an ICF/IID; and
  2. Smoking tobacco products may be permitted outside an ICF/IID if:
    - a. Signs designating smoking areas are conspicuously posted, and
    - b. Smoking is prohibited in areas where combustible materials are stored or in use.
- C.** If a swimming pool is located on the premises, an administrator shall ensure that:
1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-503(C)(1)(g) is present in the pool area when a resident is in the pool area, and
  2. At least two personnel members are present in the pool area when two or more residents are in the pool area.

**R9-10-525. Physical Plant Standards**

- A.** An administrator shall ensure that, if an ICF/IID has:
1. More than 16 residents, the ICF/IID complies with:
    - a. The applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that were in effect on the earlier of:
      - i. The date the ICF/IID was originally certified as an ICF/IID by the federal Centers for Medicare and Medicaid Services, or
      - ii. The date the ICF/IID submitted architectural plans and specifications to the Department for approval according to R9-10-104; and
    - b. The requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01; and
  2. Sixteen or fewer residents, the ICF/IID complies with the requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01.
- B.** An administrator shall ensure that:
1. The premises and equipment are sufficient to accommodate:
    - a. The services stated in the ICF/IID's scope of services, and
    - b. An individual accepted as a resident by the ICF/IID;
  2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
  3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;

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4. At least one bathroom is accessible from a common area and:
    - a. May be used by residents and visitors;
    - b. Does not open into an area in which food is prepared;
    - c. Provides privacy when in use; and
    - d. Contains the following:
      - i. At least one working sink with running water,
      - ii. At least one working toilet that flushes and has a seat,
      - iii. Toilet tissue for each toilet,
      - iv. Soap in a dispenser accessible from each sink,
      - v. Paper towels in a dispenser or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A window that opens or another means of ventilation;
  5. An outside activity space is provided and available that:
    - a. Is on the premises,
    - b. Has a hard-surfaced section for wheelchairs, and
    - c. Has an available shaded area;
  6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and
  7. The key to the door of a lockable bathroom or bedroom is available to a personnel member.
- C.** An administrator shall ensure that:
1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
  2. For every eight residents there is at least one working bathtub or shower;
  3. A resident bathroom provides privacy when in use and contains:
    - a. A mirror;
    - b. Toilet tissue for each toilet;
    - c. Soap accessible from each sink;
    - d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is used by more than one resident;
    - e. A window that opens or another means of ventilation;
    - f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and

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- g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
  - 4. An ICF/IID is ventilated by windows or mechanical ventilation, or a combination of both;
  - 5. If required for the residents of the ICF/IID, the corridors are equipped with handrails on each side that are firmly attached to the walls and are not in need of repair;
  - 6. No more than two individuals reside in a resident bedroom; and
  - 7. A resident's bedroom;
    - a. Is accessible without passing through a storage area, an equipment room, or another resident's bedroom;
    - b. Is constructed and furnished to provide unimpeded access to the door;
    - c. Has floor-to-ceiling walls with at least one door;
    - d. Does not open into any area where food is prepared, served, or stored;
    - e. If a private bedroom, has at least 80 square feet of floor space, not including a closet or bathroom;
    - f. If a shared bedroom, has at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom;
    - g. Has a separate bed, at least 36 inches in width and 72 inches in length, for each resident, consisting of at least a frame and mattress that is clean and in good repair;
    - h. Has clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for the resident;
    - i. Has furniture to meet the resident's needs and sufficient light for reading;
    - j. Has an openable window to the outside with window coverings for controlling light and visual privacy, and the location of the window permits a resident to see outside from a sitting position;
    - k. Has individual storage space for a resident's possessions and assistive devices; and
    - l. Has a closet with clothing racks and shelves accessible to the resident.
- D.** If a swimming pool is located on the premises, an administrator shall ensure that:
- 1. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;

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- c. Has no horizontal openings, except as described in subsection (D)(1)(e);
  - d. Is not chain-link;
  - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
  - f. Has a self-closing, self-latching gate that:
    - i. Opens away from the swimming pool,
    - ii. Has a latch located at least 54 inches from the ground, and
    - iii. Is locked when the swimming pool is not in use; and
2. A life preserver or shepherd's crook is available and accessible in the pool area.
- E.** An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (D)(1) is covered and locked when not in use.

## Statutory Authority

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
  - (a) Screening in early pregnancy for detecting high-risk conditions.
  - (b) Comprehensive prenatal health care.
  - (c) Maternity, delivery and postpartum care.
  - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
  - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
  - B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

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

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

### **36-405. Powers and duties of the director**

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

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

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

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for the selection of health care-related demonstration projects.

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

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

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

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

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

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

### **36-406. Powers and duties of the department**

In addition to its other powers and duties:

1. The department shall:

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

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

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

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

2. The department may:

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

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

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

### **36-407. Prohibited acts; required acts**

A. A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

B. The licensee shall not imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this chapter and the underlying rules for the particular class or subclass of health care institution within which the licensee is licensed.

C. The licensee may not transfer or assign the license. A license is valid only for the premises occupied by the institution at the time of its issuance.

D. The licensee shall not personally or through an agent offer or imply an offer of rebate or fee splitting to any person regulated by title 32 or chapter 17 of this title.

E. The licensee shall submit an itemized statement of charges to each patient.

F. A health care institution shall refer a patient who is discharged after receiving emergency services for a drug-related overdose to a behavioral health services provider.

**36-425.05. Intermediate care facilities for individuals with intellectual disabilities; licensure**

On or before January 1, 2020, an intermediate care facility for individuals with intellectual disabilities that is operated by the department of economic security or a private entity shall be licensed pursuant to this chapter and certified pursuant to 42 Code of Federal Regulations part 483, subpart I.

**G**

**CONSIDERATION AND DISCUSSION OF R1-6-303(B) EXTENSION REQUEST FOR FIVE-YEAR REVIEW REPORT FROM ARIZONA MEDICAL BOARD**



Simon Larscheidt &lt;simon.larscheidt@azdoa.gov&gt;

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**Fwd: Five-Year-Review Report for A.A.C. Title 4, Chapter 16, Article 3 & 6 - Reminder Letters**

1 message

**Anakaren Lemus** <anakaren.lemus@azdoa.gov>

Mon, May 4, 2020 at 9:56 AM

To: Simon Larscheidt &lt;simon.larscheidt@azdoa.gov&gt;, Krishna Jhaveri &lt;krishna.jhaveri@azdoa.gov&gt;

See below.

**Anakaren Lemus**

Paralegal Project Specialist | Governor's Regulatory Review Council

Public Records Manager

ADOA - Director's Office | State of Arizona  
100 North 15th Avenue, Suite 305, Phoenix, AZ 85007  
Office: 602.542.2058[Anakaren.Lemus@azdoa.gov](mailto:Anakaren.Lemus@azdoa.gov) | <http://www.azdoa.gov>

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

From: **Pat Mcsorley** <patricia.mcsorley@azmd.gov>

Date: Sun, May 3, 2020 at 9:50 PM

Subject: Fwd: Five-Year-Review Report for A.A.C. Title 4, Chapter 16, Article 3 &amp; 6 - Reminder Letters

To: Anakaren Lemus &lt;anakaren.lemus@azdoa.gov&gt;

Cc: Kristina Fredericksen &lt;Kristina.Fredericksen@azmd.gov&gt;

Hello Anakaren,

The Arizona Medical Board's Five Year Review for Articles 3 and 6 is now due on June 29. Upon a request from the Agency, GRRC has granted the automatic 120-day extension. At this time, the Agency is asking for a 60-day extension with the due date being on August 29th. This extension request is being made to allow for additional time to confer with my Board's Joint Legislative and Rules Committee (JLRC). Given the changes to our meeting calendar to accommodate teleconferencing during the Covid-19 State of emergency, the Board adjusted its schedule and the two day meeting scheduled for June has been reduced to one day. If an extension is granted, Staff will have more opportunity to collaborate with the Board and get Board approval prior to the submission of the Five Year Review Report. Since Article 3 concerns the dispensing of drugs, the Agency would appreciate the extra time to get input and approval from the Board.

Thank you for your consideration of this request for an extension of time.

Very truly yours,  
Pat

Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants

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

From: **Anakaren Lemus** <[anakaren.lemus@azdoa.gov](mailto:anakaren.lemus@azdoa.gov)>

Date: Wed, Nov 6, 2019 at 3:54 PM

Subject: Five-Year-Review Report for A.A.C. Title 4, Chapter 16, Article 3 & 6 - Reminder Letters

To: Patricia Mcsorley <[patricia.mcsorley@azmd.gov](mailto:patricia.mcsorley@azmd.gov)>

Hello Patricia,

Attached please find a reminder letter for the upcoming Five-Year-Review Report due on or before February 29, 2020.

Please let me know if you have any questions.

Thank you.

**Anakaren Lemus**

Paralegal Project Specialist | Governor's Regulatory Review Council

Arizona Department of Administration | State of Arizona

100 North 15th Avenue, Suite 305, Phoenix, AZ 85007

Office: 602.542.2058

[Anakaren.Lemus@azdoa.gov](mailto:Anakaren.Lemus@azdoa.gov) | <http://www.azdoa.gov>

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Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants



**5YRR Reminder Letter - Medical Bd (1).pdf**

221K

**H.**

**CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033(E) APPEAL FROM LYNXX  
TECHNOLOGIES, INC. APPEALING A DECISION OF THE DIRECTOR OF THE  
DEPARTMENT OF REVENUE**



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - A.R.S. § 41-1033(E) APPEAL

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**MEETING DATE:** June 2, 2020

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

**FROM:** Council Staff

**DATE:** May 12, 2020

**SUBJECT:** **A.R.S. § 41-1033(E) Appeal - Appeal of Lynxx Technologies, Inc. of a decision of the Director of the Department of Revenue**

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### I. BACKGROUND AND PROCEDURAL POSTURE

On April 30, 2020, Council staff received an appeal from Lynxx Technologies, Inc. (Lynxx), pursuant to A.R.S. § 41-1033(E). Lynxx is appealing a decision of the Director of the Department of Revenue (Department) dated April 9, 2020 rejecting a petition that it filed with the Department. Lynxx filed a petition with the Department of Revenue pursuant to A.R.S. § 41-1033 based on its belief that the Department's decisions relating to the issuance or denial of licenses to conduct bingo games pursuant to A.R.S. § 5-406 (Persons permitted to conduct games; premises; equipment; expenses, compensation) constitutes a rule that was not adopted by following the procedures of the Arizona Administrative Procedure Act (APA). The Department denied this petition pursuant to A.R.S. § 41-1033(C).

Pursuant to A.R.S. § 41-1033(E), Lynxx 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 Monday, May 11, 2020, the requisite number of Council Members requested that this appeal be placed on a meeting agenda. Therefore, on May 12, 2020, Council staff notified both Lynxx and the Department that this appeal would be on the agenda of the May 27, 2020 Study Session.

## II. LYNXX ARGUMENTS

In appealing the April 9, 2020 decision of the Director of the Department of Revenue, Lynxx identifies three Department requirements that it alleges constitute de facto “rules” under *Arizona State University ex rel. Arizona Bd. of Regents v. Arizona Retirement System*, 237 Ariz. 246, 250 (App. 2015) and thus should be declared void because they were not made pursuant to the APA: (1) the BTA rule; (2) the Tablet-Style Card Minder rule; and (3) the Live Conduct rule.

In reference to the “BTA rule,” Lynxx argues that its BTAs are not slot machines and comply with S.B. 1180 because they are technological aids; Lynxx BTAs only have one purpose, which is “to function only as electronic substitutes for bingo cards”; and Lynxx BTAs do not directly accept money, do not contain a random number generator to generate bingo numbers, and do not vend anything of value. The appeal further states that in reviewing bingo license applications, the Department consistently rejected applications from entities that stated they intended to use Lynxx’s BTAs. Lynxx argues this constitutes a de facto rule against using Lynxx BTAs in Arizona. Lynxx cites three entities that it says had applications denied because they intended to use Lynxx BTAs. Moreover, Lynxx argues that the Department’s questionnaire (Exhibit 6) has four questions clearly aimed at identifying the use of Lynxx’s BTAs. Lynxx argues that those questions allow the Department to prohibit use of Lynxx’s BTAs by denying a license to anyone who intends to use their product. Lynxx argues this conduct constitutes a de facto rule.

In reference to the “Tablet-Style Card Minder Rule”, Lynxx states that on February 20, 2020, the Department issued a letter (Exhibit 4) to all Arizona bingo licensees stating that BTAs must be in the configuration of a “tablet-style card minder.” Lynxx states that SB 1180 authorizes the use of BTAs in Arizona, but that it has no requirement that the BTAs be in the form of a tablet-style card minder.

In reference to the “Live Conduct Rule”, Lynxx states that Arizona does not limit bingo to live games only. Lynxx argues that the Director’s decision does not cite any provision of the bingo laws or regulations that states that bingo games in Arizona must be conducted live. Lynxx argues that the Department is implying such a requirement from A.R.S. § 5-406 and its administrative rules. Lynxx argues that the Department cannot imply such a requirement without first going through the rulemaking process pursuant to the APA.

### III. STAFF RECOMMENDATION

At this juncture, the issue before the Council is whether Lynxx has provided sufficient information in its appeal that the Department's conduct constitutes a "rule" that was not adopted pursuant to the APA 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...**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." (Emphasis added).

Council staff finds that in reference to Lynxx's first point, regarding the "BTA rule," the appeal may raise a question as to whether the Department's requirement that bingo license renewal applicants complete a "Live Bingo License Renewal Questionnaire" constitutes a "rule" that should be adopted pursuant to the APA.

In reference to the other points raised in the appeal, Council staff does not find that Lynxx has provided sufficient information to identify conduct on the part of the Department that constitutes a "rule."

Specifically, in reference to the "Tablet-Style Card Minder Rule" issue raised on page 4 of Lynxx's appeal, the February 20, 2020 letter from the Department states that "[t]he Department is taking this opportunity to remind bingo licensees that they are licensed **to conduct live bingo games only**. While 'technological aids for bingo games that **function only as electronic substitutes for bingo cards**' (e.g. tablet-style card minders) may be used **in conjunction with** live bingo games, Arizona law **does not allow** for the use of electronic gaming devices (e.g. slot-machines) by bingo licensees" (emphasis in original). The letter does not say, as Lynxx's appeal contends, "that BTAs must be in the configuration of a 'tablet-style card minder.'" The Department only identified a "tablet-style card minder" as an example of what qualifies as a BTA under the statute. The Department's definition of a technological aid is consistent with that found in A.R.S. § 5-406(Y)(1) which states that technological aids for bingo must "function only as electronic substitutes for bingo cards...." The Department's recitation of the plain language of the statute to licensees is not an agency practice that would require rulemaking under the APA.

In reference to the "Live Conduct Rule" issue raised on page 4 of Lynxx's appeal, Council staff finds that under A.R.S. § 5-406 (Persons permitted to conduct games; premises; equipment; expenses, compensation), the plain language of multiple provisions of this statute is clear that bingo games must be conducted live. For example, A.R.S. § 5-406(V) states, "[**a**] **person who is not physically present on the premises where the game is actually conducted** shall not be allowed to participate as a player in the game" (emphasis added). Furthermore, the Department has defined a "player" in its rules as "an individual, 18 years of age or older, who

pays the admission fee, if any, to be admitted to the premises and who plays one or more cards.” *See* R15-7-201. The statutes also provide that games are conducted by a “person,” and that games use objects or balls that are drawn and that are present and visible in a receptacle before each game begins. *See* A.R.S. § 5-406(R). In addition, the person who calls the numbers and the person who removes the objects or balls from the receptacle must be present and visible in the room where the game is being played. *See* A.R.S. § 5-406(S). These statutory requirements, among others, when read in conjunction, make clear that bingo games in the State of Arizona must be conducted “live” as that word is commonly understood.

Lynxx argues that the Department “cites no provision of the bingo laws or regulations that specifically limits bingo in Arizona to live games. Instead, [the Department] implies such a requirement from A.R.S. § 5-406 and from its administrative rules beginning at A.A.C. § R15-7-201. But it cannot apply its implied ‘live’ game requirement generally throughout Arizona without complying with the APA’s rule making process....” Council staff disagrees as outlined above. The Department is merely enforcing the statutes according to their plain language. Such conduct by the Department is not an agency practice that requires rulemaking under the APA.

Therefore, Council staff recommends that the Council vote to hear Lynxx’s appeal only as it relates to the first point, regarding the “BTA rule.” Specifically, Lynxx provided information that the Department’s conduct as it relates to the Live Bingo License Renewal Questionnaire, could be a “rule” that should be adopted pursuant to the APA. Council staff does not recommend that the Council vote to hear the other points raised in Lynxx’s appeal.

1 **CANTELME & BROWN, P.L.C.**

2 A Professional Liability Company  
2020 S. McClintock Drive, Suite 109  
Tempe, Arizona 85282

3 Tel (602) 200-0104 Fax (602) 200-0106

4 E-mail: [david@cb-attorneys.com](mailto:david@cb-attorneys.com)/[aaron@cb-attorneys.com](mailto:aaron@cb-attorneys.com)

5 David J. Cantelme, Bar No. 006313  
D. Aaron Brown, Bar No. 022133  
*Attorneys for Appellant Lynxx Technologies, LLC*

6 **BEFORE THE GOVERNOR'S REGULATORY REVIEW COUNCIL**

7 **STATE OF ARIZONA**

8  
9 *In the Matter of:*

10 **LYNXX TECHNOLOGIES, INC.'S**  
11 **TECHNOLOGICAL AIDS FOR**  
12 **BINGO GAMES THAT FUNCTION**  
13 **ONLY AS ELECTRONIC**  
14 **SUBSTITUTES FOR BINGO CARDS**

**APPEAL OF LYNXX**  
**TECHNOLOGIES, INC., OF THE**  
**DECISION OF THE DIRECTOR**  
**OF THE DEPARTMENT OF**  
**REVENUE DENYING PETITION**  
**AND AMENDED PETITION**

15 **APPEAL**

16 Pursuant to A.R.S. § 41-1033(E), Lynxx Technologies, Inc., (“Lynxx”) appeals  
17 the decision (“Decision”), dated April 9, 2020, of the Director of the Arizona Department  
18 of Revenue (“Director”), denying the petition and amended petition filed by Lynxx with  
19 the Director respectively on February 14, 2020, and March 11, 2020. This appeal is taken  
20 to the Governor’s Regulatory Review Council, State of Arizona (“Council”). Pursuant to  
21 A.R.S. §§ 41-1001.01(A)(9) and 41-1033, Lynxx filed the petition and amended petition  
22 with the Director for review of the existing practices or substantive policies of the Arizona  
23 Department of Revenue (“DOR”) prohibiting the use of technological aids for bingo  
24 games that function only as electronic substitutes for bingo cards (“BTA” or “BTAs”)  
25  
26

1 supplied by Lynxx. The grounds of appeal and relief requested are set forth below.

2 Copies of the Decision and of the petition (minus exhibits) are attached as Ex. 1  
3 and 2. The Decision included a copy of the amended petition, which Lynxx attaches  
4 separately as Ex. 3. The petition and amended petition contained three exhibits: DOR  
5 letter dated February 20, 2020; “Notice to Bingo Licensees re SB 1180,” issued by the  
6 Gaming Department on August 9, 2017; and a copy of DOR’s Live Bingo License  
7 Renewal Questionnaire.” These items are broken out separately and attached as Ex. 4-6.

8  
9 **PARTIES**

10 Lynxx is an Arizona corporation in good standing with the Arizona Corporation  
11 Commission, and it supplies BTAs for use in Arizona. Lynxx was formerly known as  
12 Lynxx Gaming, Inc, but changed its name to Lynxx Technologies, Inc., by articles of  
13 amendment filed with the Arizona Corporation Commission on March 25, 2020.  
14

15 Lynxx meets the definition of a small business set forth in A.R.S. § 41-1001(21).  
16 A.R.S. § 5-402 makes DOR the licensing authority for bingo in Arizona.  
17

18 **GROUND OF APPEAL**

19 Lynxx appeals the Decision to the Council on the grounds that DOR adopted the  
20 following policies or practices, which constitute *de facto* rules, without compliance with  
21 the rule-making processes of the Arizona Administrative Procedure Act (“APA”), Ch. 6.,  
22 Title 41, including specifically but without limitation, A.R.S. §§ 41-1021 through 41-  
23 1029 and articles 4, 4.1, and 5, Ch. 6, Title 41, A.R.S.: 1) rejecting all bingo-license  
24 applications in which the applicant lists an intent to use Lynxx BTAs, (2) requiring BTAs  
25  
26

1 in Arizona to be in the form of a “tablet-style card-minder,” and (3) requiring bingo games  
2 be conducted *live* in Arizona. DOR must abandon such *de facto* rules forthwith under  
3 A.R.S. § 41-1030(C), and the Council must declare them void under A.R.S. §§ 41-  
4 1030(A) and 41-1033(J). *Arizona State University ex rel. Arizona Bd. of Regents v.*  
5 *Arizona Retirement System*, 237 Ariz. 246, 250, ¶ 16 (App. 2015).  
6

### 7 **BTAs**

8 In 2017, the Legislature authorized the use of BTAs in Arizona when it passed  
9 S.B. 1180, 2017 ARIZ.SESS.LAWS, ch. 240 (1<sup>st</sup> REG.SESS., 53d LEG.), which amended  
10 A.R.S. § 5-406. DOR has issued no rules implementing SB 1180. Lynxx’s BTAs are not  
11 slot machines and comply with S.B. 1180 for these reasons: First, they are technological  
12 aids. Second, they have one purpose, and only one purpose: “to function only as electronic  
13 substitutes for bingo cards.” Third, they do not directly accept money, do not contain a  
14 random number generator to generate bingo numbers, and do not vend anything of value.  
15  
16

### 17 **THE BTA RULE**

18 DOR’s conduct establishes a *de facto* rule to outlaw the use of Lynxx BTAs in  
19 Arizona. DOR published on its website a memorandum (Ex. 5) issued by the Arizona  
20 Gaming Department, dated 08.09.2017, regarding the subject, “Bingo Gambling Devices  
21 and Senate Bill 1180.” In that memorandum, at pages 2-3, the Gaming Department (not  
22 the Revenue Department) described what it considered to be the components of a BTA.  
23

24 Acting through its process for reviewing bingo-license applications, DOR  
25 consistently has summarily rejected applications from entities that have expressed an  
26

1 intent to use Lynxx BTAs in conducting bingo games as permitted by A.R.S. § 5-406.

2 DOR thereby has adopted a *de facto* rule outlawing the use of Lynxx BTAs in Arizona.

3 Specifically, Lynxx is aware of at least three instances in which DOR has denied  
4 bingo-license applications because of the applicant's intended use of Lynxx BTAs. DOR  
5 took such denial actions with respect to bingo-license applications submitted by VFW  
6 Post 769, Hope for the Homeless, and OJC Kids.  
7

8 In the same vein, DOR has drafted a Live Bingo License Renewal Questionnaire  
9 (copy attached as Ex. 6) with four questions clearly aimed at identifying the use of  
10 Lynxx's BTAs. Such identification allows DOR to prohibit the use of Lynxx BTAs by  
11 denying the issuance of the license. Such conduct constitutes a *de facto* rule under the  
12 two prongs of the *Arizona State University* test. 237 Ariz. at 250, ¶ 16.  
13

#### 14 **THE TABLET-STYLE CARD MINDER RULE**

15  
16 On February 20, 2020, DOR issued a letter (copy attached as Ex. 4) to all Arizona  
17 bingo licensees stating that BTAs must be in the configuration of a "tablet-style card  
18 minder." SB 1180 authorizes the use of BTAs in Arizona, but it has no requirement that  
19 such BTAs be in the form of a tablet-style card minder. DOR's requirement that BTAs  
20 do so, therefore, constitutes a *de facto* rule under the *Arizona State University* test.  
21

#### 22 **THE LIVE CONDUCT RULE**

23 Arizona law does not limit bingo to "live" games only. Chapter 6, Title 5, A.R.S.,  
24 regulates bingo in Arizona, but it does not define what constitutes bingo. DOR defined  
25 bingo at A.A.C. § 15-7-201, but the definition does not require that bingo games be "live."  
26



1                                   **DATED** on April 30, 2020.

2  
3                                   **CANTELME & BROWN, P.L.C.**

4                                   

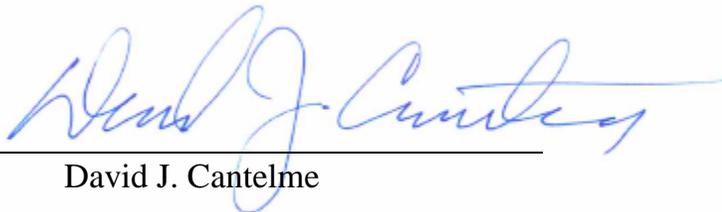
5  
6                                   David J. Cantelme, Bar No. 006313  
7                                   D. Aaron Brown, Bar No. 022133  
8                                   2020 S. McClintock Drive, Suite 109  
9                                   Tempe, Arizona 85282  
10                                  *Attorneys for Appellant*

11                                  Copies mailed on April 30, 2020, to:

12                                  Carlton Woodruff, Director  
13                                  Arizona Department of Revenue  
14                                  1600 W. Monroe Street  
15                                  Phoenix, Arizona 85007-2650

16                                  Robert L. Ridenour, Esq.  
17                                  Arizona Department of Revenue  
18                                  1600 W. Monroe  
19                                  Phoenix, AZ 85007  
20                                  [rridenour@azdor.gov](mailto:rridenour@azdor.gov)  
21                                  *Counsel for the Department of Revenue*

22                                  Copy also emailed to Counsel Ridenour on  
23                                  April 30, 2020.

24                                    
25                                  \_\_\_\_\_  
26                                  David J. Cantelme

# **EXHIBIT 1**

# STATE OF ARIZONA

Arizona Department of Revenue



Douglas A. Ducey  
Governor

Carlton Woodruff  
Director

## CERTIFIED MAIL

**The Director's Decision Regarding:** )  
 )  
**Lynxx Gaming, Inc.'s Petitions for Review of** )  
**Existing DOR Practices or Substantive Policy** )  
**Statements that Constitute a Rule** )  
\_\_\_\_\_ )

Lynxx Gaming, Inc., ("Petitioner") filed a petition on February 14, 2020, and an Amended Petition on March 11, 2020, (collectively "Petitions") asking the Director of the Arizona Department of Revenue ("Department") to review "existing practices or substantive policies" relating to the issuance or denial of licenses to conduct bingo games pursuant to Arizona Revised Statutes ("A.R.S.") § 5-406. Petitioner alleges that the Department's licensure decisions interpreting section 406 constitute a rule that was not adopted pursuant to the Arizona Administrative Procedures Act ("APA") and must be abandoned. Specifically, the Petitions allege that because there is no requirement for a "live" game under Arizona law or administrative rules relating to bingo, the Department's denial of license applications when no live games will occur violates the APA. For the reasons explained below, the Petitions are denied.

The Department is the state's licensing authority for bingo under A.R.S. § 5-402. An individual or organization applying for a license to conduct bingo games must provide the Department with any information required by statute or deemed advisable by the Department, establishing that bingo games will be conducted in accordance with Arizona law. Among these requirements are limitations concerning the type and frequency of the

bingo games an applicant may conduct and the methods for conducting the games. See A.R.S. §§ 5-401 *et seq.*

The statutes provide that games are conducted by a “person,” and that games use objects or balls that are drawn and that are present and visible in a receptacle before each game begins. A.R.S. § 5-406. In addition, the person who calls the numbers and the person who removes the objects or balls from the receptacle must be present and visible in the room where the game is being played. The arrangement of numbers required to win must be audibly or visibly announced to the players and players may call for verification of all of the numbers drawn or the objects or balls remaining in the receptacle. These verifications, if requested, must be made in the presence of both a supervisor and the players who requested them. *Id.*

Such requirements for live elements of bingo games are not unique to Arizona. See, e.g., *State v. 825 Elec. Gambling Devices*, 226 So.3d 660 (Ala. 2016) (finding bingo games played on electronic devices failed to meet the live elements required by state law); *Fraternal Order of Eagles Sheridan Aerie No. 186, Inc. v. State ex rel. Forwood*, 126 P.3d 847 (Wyo. 2006) (electronic bingo did not meet commonly understood elements of bingo games).

The Department has also enacted rules pursuant to the APA pertaining to the regulation of bingo. See Arizona Administrative Code (“A.A.C.”) R15-7-201 *et seq.* These rules provide, in part, that there must be a “caller” who uses a receptacle with balls or objects used to call games; that the receptacle is a container that holds the balls; that before beginning a bingo occasion, the caller must verify that all bingo balls are present and that there are no duplicates; that a supervisor must verify the balls on a master board for the

official comparison to determine a winner; and that callers “announce” the letters and numbers on balls, and players “announce” when they have bingo. These rules also repeatedly reference that there are multiple “players” for these games. *Id.*

Thus, both the statutes the Legislature enacted and the administrative rules the Department adopted have provisions that require a live bingo game with a caller, bingo balls, and players.

In 2017, the Legislature passed Senate Bill (“SB”) 1180, adding provisions that allow for the use of “technological aids for bingo games that function **only** as electronic substitutes for bingo cards.” See Laws 2017, ch. 240, § 1 (emphasis added). Such technological aids may only be used to join bingo games as authorized by law. The technological aids permitted by this provision may function only as a substitute for paper bingo cards in the context of bingo games otherwise operated in compliance with the above cited Arizona statutes and regulations. SB 1180 does not authorize the Department to issue a license to an applicant who intends to offer use of a machine only to allow an individual to independently play games of bingo.

Petitioner argues that the Department’s interpretation of the laws and rules related to bingo—specifically those requiring a live game—violates the APA, citing *Arizona State University v. Arizona State Retirement System*, 237 Ariz. 246 (App. 2015). In that case, the court examined whether the Arizona State Retirement System (“ASRS”) violated the APA by not enacting a rule concerning the calculation of an unfunded liability that arose when employees retired. There, the statute at issue provided that an employer must pay the ASRS for an unfunded liability, but did not specify the method of calculating the reimbursement.

The court found that the plain language of the statute left open the question of how to calculate the refund liability. The ASRS created a methodology, but failed to follow the rulemaking process. As a result, the court held that the ASRS's enactment of a methodology to calculate the refund was a rule which was invalid because it was not enacted pursuant to the APA.

Under the principles of statutory interpretation, if a statute is "subject to only one reasonable interpretation" when looking to the words and context, it is applied "without further analysis." *City of Surprise v. Ariz. Corp. Comm'n*, 246 Ariz. 206, 210 (2019); see also *State v. Silva*, 222 Ariz. 457, 460 (App. 2009) (rules and statutes with "clear and unequivocal" language are determinative). Petitioner argues that the Department's determination that a live bingo game is required is also a rule that was not enacted pursuant to the APA and is invalid. However, in contrast to the situation in *Arizona State University*, here, the statutes and rules that apply to bingo are unambiguous as to whether a licensee conducts a live game. The statutes and rules all provide that bingo games must be held using live facilitators, actual objects or balls, receptacles, etc. Therefore, unlike the ASRS in *Arizona State University*, the Department is not creating a rule when it requires these elements be met before issuing a bingo license. It is merely restating what is already required in statute.

In exercising its licensing authority as an administrative agency, the Department's powers and duties are those delegated to it expressly or implicitly by the Legislature. See *Whitmer v. Hilton Casitas Homeowners Ass'n*, 245 Ariz. 77, 80 (App. 2018); *Ariz. Cannabis Nurses Ass'n v. Ariz. Dep't of Health Servs.*, 242 Ariz. 62, 67 (App. 2017); A.R.S. § 5-402. In order for the Department to grant a bingo license, the applicant must provide sufficient information for the Department to conclude that live bingo games will be conducted at a

specified location and as authorized by statute, including whether the applicant meets certain minimum criteria as to the premises and equipment used. A.R.S. § 5-406. Whether or not the applicant intends to use technological aids in conjunction with live bingo games is irrelevant to the Department's decision to grant or deny a license application. If, for example, an applicant intends to conduct live bingo games and also make available technological aids, the license will be granted, *assuming all other requirements are met*. However, if the applicant indicates it *only* intends to conduct bingo using a technological aid or machine, with no intent of conducting live bingo, the application will be denied.

The Department's application and licensing process is based on the requirements the Legislature imposed and the rules the Department adopted. Enforcing requirements that can only be met when a live bingo game is conducted do not constitute the enforcement of invalid rules and the Department's actions as a licensing authority do not violate the APA.

For all of the forgoing reasons, the Petitions are DENIED.

Director's Decision re: Lynxx Gaming, Inc.

April 9, 2020

Page 6

Dated this 9<sup>th</sup> day of April 2020.

ARIZONA DEPARTMENT OF REVENUE

A handwritten signature in black ink, appearing to read 'Carlton Woodruff', written over a horizontal line.

Carlton Woodruff  
Director

Certified original of the foregoing  
mailed to:

David J. Cantelme  
Cantelme and Brown, P.L.C.  
2020 S. McClintock Dr. Suite 109  
Tempe, AZ 85282

# **EXHIBIT 2**

1 **CANTELME & BROWN, P.L.C.**

2 A Professional Liability Company  
3 2020 S. McClintock Drive, Suite 109  
4 Tempe, Arizona 85282  
5 Tel (602) 200-0104 Fax (602) 200-0106  
6 E-mail: [david@cb-attorneys.com](mailto:david@cb-attorneys.com)/[aaron@cb-attorneys.com](mailto:aaron@cb-attorneys.com)

7 David J. Cantelme, Bar No. 006313  
8 D. Aaron Brown, Bar No. 022133  
9 Attorneys for Petitioner Lynxx Gaming, LLC

Arizona Dept. Of Revenue  
Director's Office  
FEB 14 2020  
Received

10 **BEFORE THE DIRECTOR**  
11 **ARIZONA DEPARTMENT OF REVENUE**

12 *In the Matter of:*

13 **LYNXX GAMING, INC.'S  
14 TECHNOLOGICAL AIDS FOR  
15 BINGO GAMES THAT FUNCTION  
16 ONLY AS ELECTRONIC  
17 SUBSTITUTES FOR BINGO CARDS**

**LYNXX GAMING, INC.'S  
18 PETITION FOR REVIEW OF  
19 EXISTING ADOR PRACTICES  
20 OR SUBSTANTIVE POLICY  
21 STATEMENTS THAT  
22 CONSTITUTE A RULE**

23 **1. Introduction.**

24 Pursuant to ARIZ.REV.STAT. §§ 41-1001.01(A)(9) and 41-1033, Lynxx Gaming,  
25 Inc. ("Lynxx"), an Arizona corporation in good standing, petitions the Arizona  
26 Department of Revenue ("DOR") for review of DOR's existing practices or substantive  
policies prohibiting the use of technological aids for bingo games that function only as  
electronic substitutes for bingo cards ("BTA" or "BTAs") supplied by Lynxx.

Lynxx meets the definition of a small business set forth in ARIZ.REV.STAT. § 41-  
1001(21), and therefore has standing to petition DOR for such relief under  
ARIZ.REV.STAT. §§ 41-1001.01(A)(9) and 41-1033. It does not appear that DOR has  
prescribed "the form of the petition and the procedures for the petition's submission,  
consideration and disposition," despite the requirement to do so set forth in

1 ARIZ.REV.STAT. § 41-1033(B). If for any reason you find this to be error, please advise  
2 Lynxx of the petition form and procedures, and Lynxx will make any necessary  
3 amendment or revisions to this petition.

4 In 2017, the Legislature passed Senate Bill 1180, the Governor signed the bill into  
5 law, and the bill was chaptered at 2017 ARIZ.SESS.LAWS ch. 240 (1<sup>st</sup> REG.SESS., 53d  
6 LEG.)

7 S.B. 1180 amended ARIZ.REV.STAT. § 5-406, and authorized the use of BTAs  
8 by bingo licensees for the purpose of providing assistance to persons with disabilities.  
9 Lynxx provides BTAs for use by bingo licensees, and in our opinion its BTAs comply  
10 with S.B. 1180's authorized uses.

11 Acting through its process for review of applications for a bingo license, DOR  
12 consistently has summarily rejected applications from entities that have expressed an  
13 intent to use Lynxx BTAs in conducting bingo games as permitted by art. 1. ch. 4. title 5,  
14 ARIZ.REV.STAT. AS developed below, this practice constitutes a rule within the meaning  
15 of ARIZ.REV.STAT. § 41-1001(19), DOR did not adopt the rule pursuant to the rule-  
16 making process set forth in the Arizona Administrative Procedure Act ("APA"), Ch. 6.  
17 Title 41, ARIZ.REV.STAT., this *de facto* rule violates S.B. 1180 and ARIZ.REV.STAT. § 5-  
18 406, and DOR should rescind or abandon the *de facto* rule immediately.

19  
20 **2. The DOR Practice Constitutes a Rule Not Adopted pursuant to the APA,  
and Accordingly Must Be Abandoned.**

21 ARIZ.REV.STAT. § 41-1001(19) defines a "rule" as follows:

22  
23 "Rule" means an agency statement of general applicability that  
24 implements, interprets or prescribes law or policy, or describes the  
25 procedure or practice requirements of an agency. Rule includes prescribing  
26 fees or the amendment or repeal of a prior rule but does not include  
intraagency memoranda that are not delegation agreements.

The Arizona Court of Appeals has explained this definition as follows:

1 [A]n agency statement is a rule, subject to the APA's rulemaking  
2 procedure, if it, first, is generally applicable, and, second, implements,  
3 interprets or prescribes law or policy, or describes the procedure or practice  
4 requirements of an agency. At the administrative hearing, the System  
5 acknowledged it had applied the Policy consistently to all System  
6 employers since its adoption, and, thus, the Policy satisfies the general  
7 applicability requirement.

8 *Arizona State University ex rel. Arizona Bd. of Regents v. Arizona Retirement System*,  
9 237 Ariz. 246, 250, ¶ 16 (App. 2015).

10 Lynxx is aware of at least three instances in which DOR has denied bingo-license  
11 applications because of the applicant's intended use of Lynxx BTAs. DOR took such  
12 denial actions with respect to bingo-license applications submitted by VFW Post 769,  
13 Hope for the Homeless, and OJC Kids.

14 DOR's *de facto* policy meets the definition of a rule, as explained in the *Arizona*  
15 *State University* case, for at least the following three reasons:

16 First, DOR has published on its website a memorandum issued by the Arizona  
17 Gaming Department, dated August 9, 2017, regarding the subject. "Bingo Gambling  
18 Devices and Senate Bill 1180," and its *de facto* rule appears intended to implement the  
19 legal analysis set forth in the memorandum without compliance with the APA's rule-  
20 making process. This memorandum is found at [https://azdor.gov/sites/default/files/  
21 ElectronicBingoNotice.pdf](https://azdor.gov/sites/default/files/ElectronicBingoNotice.pdf), and a copy is attached as Exhibit 1 for convenience.

22 Second, this record discloses what appears to be DOR's standard policy summarily  
23 to reject all bingo-license applications in which the applicant has expressed an intent to  
24 use Lynxx BTAs in conducting bingo games. That satisfies the general-application prong  
25 of the test.

26 Third, DOR has drafted a Live Bingo License Renewal Questionnaire to add four  
questions that are clearly aimed at Lynxx's BTAs:

"2. Is the person drawing and calling the numbers PHYSICALLY on the  
premises when your live bingo games are being conducted?"

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Yes                       No

“3. Does a secondary supervisor verify your live bingo game numbers?

Yes                       No”

“4. Who is your live bingo supplier? (For all bingo supplies.)

“ \_\_\_\_\_

“5. Do you foresee purchasing/renting machines as ‘technological aids for your live bingo games?’

Yes                       No

“If so, do you already have a supplier in mind?

Yes                       No”

A copy of the relevant page of the Questionnaire is attached as Exhibit 2, and is adopted herein by reference.

Fourth, this record also discloses that DOR’s policy is intended, however erroneously, to implement or interpret SB 1180 and prescribes or describes DOR practice requirements for issuing bingo licenses.

Accordingly, DOR’s *de facto* policy of summarily rejecting all bingo applications when an applicant has expressed an intent to use Lynxx BTAs constitutes a rule which must be adopted pursuant to the APA, and DOR’s failure to do so invalidates the *de facto* rule. *Arizona State University*, 237 Ariz. at 253-54, ¶ 32. Under ARIZ.REV.STAT. § 41-1033(C), DOR must abandon this practice forthwith. While DOR has authority to initiate the rule-making process under the APA with respect to its *de facto*, doing so would be futile, because the Lynxx BTAs comply with SB 1180.

**3. Lynxx’s BTAs Comply with SB 1180.**

Lynxx’s BTAs comply with ARIZ.REV.STAT. § 5-406, as amended by SB 1180, for the following reasons: First, they are technological aids. Second, they have one purpose, and only one purpose: “to function only as electronic substitutes for bingo

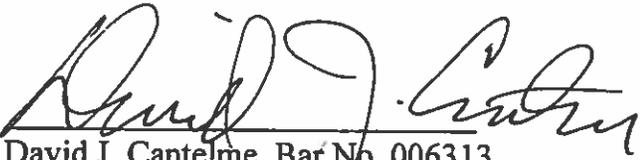
1 cards.” They do not directly accept money, they do not contain a random number  
2 generator to generate bingo numbers, nor do they vend anything of value. They do nothing  
3 more than to display bingo cards, bingo numbers called and a graphic representation of  
4 bingo wins or losses.

5 **4. Relief Requested.**

6 Lynxx therefore respectfully requests that DOR give this petition due  
7 consideration, take action on it within 60 days of submission as required by  
8 ARIZ.REV.STAT. § 41-1033(C), and abandon the practice or *de facto* rule of summarily  
9 rejecting applications from entities that have expressed an intent to use Lynxx BTAs in  
10 conducting bingo games.

11  
12 **DATED** on February 13, 2020.

13 **CANTELME & BROWN, P.L.C.**

14  
15  
16 

17 David J. Cantelme, Bar No. 006313  
18 2020 S. McClintock Drive, Suite 109  
19 Tempe, Arizona 85282 *Attorneys for*  
20 *Appellant*

21  
22  
23  
24  
25  
26

# **EXHIBIT 3**

1 **CANTELME & BROWN, P.L.C.**

2 A Professional Liability Company  
3 2020 S. McClintock Drive, Suite 109  
4 Tempe, Arizona 85282  
5 Tel (602) 200-0104 Fax (602) 200-0106  
6 E-mail: [david@cb-attorneys.com](mailto:david@cb-attorneys.com)/[aaron@cb-attorneys.com](mailto:aaron@cb-attorneys.com)

7 David J. Cantelme, Bar No. 006313  
8 D. Aaron Brown, Bar No. 022133  
9 *Attorneys for* Petitioner Lynxx Gaming, LLC

**Arizona Dept. of Revenue**  
**Lobby Desk - PHX**

MAK 11 2020

**Received**

10 **BEFORE THE DIRECTOR**

11 **ARIZONA DEPARTMENT OF REVENUE**

12 *In the Matter of:*

13 **LYNXX GAMING, INC.'S  
14 TECHNOLOGICAL AIDS FOR  
15 BINGO GAMES THAT FUNCTION  
16 ONLY AS ELECTRONIC  
17 SUBSTITUTES FOR BINGO CARDS**

**LYNXX GAMING, INC.'S  
AMENDED PETITION FOR  
REVIEW OF EXISTING DOR  
PRACTICES OR SUBSTANTIVE  
POLICY STATEMENTS THAT  
CONSTITUTE A RULE**

18 **1. Introduction.**

19 On February 14, 2020, Lynxx Gaming, Inc. ("Lynxx"), an Arizona corporation in  
20 good standing, filed a petition with the Director of the Arizona Department of Revenue  
21 ("DOR") for review of DOR's existing practices or substantive policies prohibiting the  
22 use of technological aids for bingo games that function only as electronic substitutes for  
23 bingo cards ("BTA" or "BTAs") supplied by Lynxx. Lynxx filed the petition pursuant to  
24 ARIZ.REV.STAT. §§ 41-1001.01(A)(9) and 41-1033. Since the filing of such petition, new  
25 information has come to light providing further grounds for the petition and for relief, and  
26 Lynxx accordingly amends the petition to add such grounds, which are detailed below in  
section 4 of this amendment. In summary, such grounds are that on February 20, 2020,  
DOR issued a letter sent to all Arizona bingo licensees stating that (a) Arizona law allows

1 only live bingo games to be conducted by a licensee, (b) BTAs can only be used in  
2 conjunction with live bingo games, and (c) BTAs must be in the configuration of a “tablet-  
3 style card minder.”<sup>1</sup> All three contentions are error under Arizona law, and should be  
4 withdrawn. Lynxx amends the Relief-Requested section appearing below to add such  
5 further grounds for relief, and renumbers the sections herein accordingly.

6 Lynxx meets the definition of a small business set forth in ARIZ.REV.STAT. § 41-  
7 1001(21), and therefore has standing to petition DOR for such relief under  
8 ARIZ.REV.STAT. §§ 41-1001.01(A)(9) and 41-1033. It does not appear that DOR has  
9 prescribed “the form of the petition and the procedures for the petition's submission,  
10 consideration and disposition,” despite the requirement to do so set forth in  
11 ARIZ.REV.STAT. § 41-1033(B). If for any reason you find this to be error, please advise  
12 Lynxx of the petition form and procedures, and Lynxx will make any necessary  
13 amendment or revisions to this petition.

14 In 2017, the Legislature passed Senate Bill 1180, the Governor signed the bill into  
15 law, and the bill was chaptered at 2017 ARIZ.SESS.LAWS, ch. 240 (1<sup>st</sup> REG.SESS., 53d  
16 LEG.)

17 S.B. 1180 amended ARIZ.REV.STAT. § 5-406 and authorized the use of BTAs by  
18 bingo licensees for the purpose of providing assistance to persons with disabilities. Lynxx  
19 provides BTAs for use by bingo licensees, and in our opinion the Lynxx BTAs comply  
20 with S.B. 1180’s authorized uses.

21 Acting through its process for review of applications for a bingo license, DOR  
22 consistently has summarily rejected applications from entities that have expressed an  
23 intent to use the Lynxx BTAs in conducting bingo games as permitted by art. 1. ch. 4.  
24 title 5, ARIZ.REV.STAT. As developed below, (i) this practice constitutes a rule within the

25  
26 <sup>1</sup> A copy of the February 20, 2020, letter is attached as Exhibit 1, and is adopted herein  
by reference.

1 meaning of ARIZ.REV.STAT. § 41-1001(19), (ii) DOR did not adopt the rule pursuant to  
2 the rule-making process set forth in the Arizona Administrative Procedure Act (“APA”),  
3 Ch. 6. Title 41, ARIZ.REV.STAT., (iii) this *de facto* rule violates S.B. 1180 and  
4 ARIZ.REV.STAT. § 5-406, and (iv) DOR should rescind or abandon the *de facto* rule  
5 immediately.

6  
7 **2. The DOR Practice Constitutes a Rule Not Adopted pursuant to the APA,  
and Accordingly Must Be Abandoned.**

8 ARIZ.REV.STAT. § 41-1001(19) defines a “rule” as follows:

9  
10 “Rule” means an agency statement of general applicability that  
11 implements, interprets or prescribes law or policy, or describes the  
12 procedure or practice requirements of an agency. Rule includes prescribing  
fees or the amendment or repeal of a prior rule but does not include  
intraagency memoranda that are not delegation agreements.

13 The Arizona Court of Appeals has explained this definition as follows:

14 [A]n agency statement is a rule, subject to the APA's rulemaking  
15 procedure, if it, first, is generally applicable, and, second, implements,  
16 interprets or prescribes law or policy, or describes the procedure or practice  
17 requirements of an agency. At the administrative hearing, the System  
18 acknowledged it had applied the Policy consistently to all System  
employers since its adoption, and, thus, the Policy satisfies the general  
applicability requirement.

19 *Arizona State Univ. ex rel. Arizona Bd. of Regents v. Arizona Ret. Sys.*, 237 Ariz. 246,  
20 250, ¶ 16 (App. 2015).

21 Lynxx is aware of at least three instances in which DOR has denied bingo-license  
22 applications because of the applicant's intended use of the Lynxx BTAs. DOR took such  
23 denial actions with respect to bingo-license applications submitted by VFW Post 769,  
24 Hope for the Homeless, and OJC Kids.

25 DOR's *de facto* rule meets the definition of a rule, as explained in the *Arizona*  
26 *State University* case, for at least the following three reasons:

1 First, DOR has published on its website a memorandum issued by the Arizona  
2 Gaming Department, dated August 9, 2017, regarding the subject, "Bingo Gambling  
3 Devices and Senate Bill 1180," and its *de facto* rule appears intended to implement the  
4 legal analysis set forth in the memorandum without compliance with the APA's rule-  
5 making process. This memorandum is found at [https://azdor.gov/sites/default/files/  
6 ElectronicBingoNotice.pdf](https://azdor.gov/sites/default/files/ElectronicBingoNotice.pdf), and a copy is attached as Exhibit 2 for convenience.

7 Second, this record discloses what appears to be DOR's standard policy  
8 summarily to reject all bingo-license applications in which the applicant has expressed an  
9 intent to use the Lynxx BTAs in conducting bingo games. That satisfies the general-  
10 application prong of the test.

11 Third, DOR has drafted a Live Bingo License Renewal Questionnaire to add four  
12 questions that are clearly aimed at the Lynxx BTAs:

13 "2. Is the person drawing and calling the numbers PHYSICALLY on the  
14 premises when your live bingo games are being conducted?

15 " Yes  No

16 "3. Does a secondary supervisor verify your live bingo game numbers?

17 " Yes  No"

18 "4. Who is your live bingo supplier? (For all bingo supplies.)

19 "

20 "5. Do you foresee purchasing/renting machines as 'technological aids for your  
21 live bingo games?'

22 " Yes  No

23 "If so, do you already have a supplier in mind?

24 " Yes  No"

25 A copy of the relevant page of the Questionnaire is attached as Exhibit 3, and is  
26 adopted herein by reference.

1 Fourth, this record also discloses that DOR's policy is intended, however  
2 erroneously, to implement or interpret SB 1180 and prescribes or describes DOR practice  
3 requirements for issuing bingo licenses.

4 Accordingly, DOR's *de facto* rule of summarily rejecting all bingo applications  
5 when an applicant has expressed an intent to use the Lynxx BTAs constitutes a rule which  
6 must be adopted pursuant to the APA, and DOR's failure to do so invalidates the *de facto*  
7 rule. *Arizona State University*, 237 Ariz. at 253-54, ¶ 32. Under ARIZ.REV.STAT. § 41-  
8 1033(C), DOR must abandon this practice forthwith. While DOR has authority to initiate  
9 the rule-making process under the APA with respect to its *de facto* rule, doing so would  
10 be futile, because the Lynxx BTAs comply with SB 1180.

11 **3. The Lynxx BTAs Comply with SB 1180.**

12 The Lynxx BTAs comply with ARIZ.REV.STAT. § 5-406, as amended by SB 1180,  
13 for the following reasons: First, they are technological aids. Second, they have one  
14 purpose, and only one purpose: "to function only as electronic substitutes for bingo  
15 cards." They do not directly accept money, they do not contain a random number  
16 generator to generate bingo numbers, nor do they vend anything of value. They do  
17 nothing more than to display bingo cards, bingo numbers called and a graphic  
18 representation of bingo wins or losses.

19 **4. The Contentions Made in the Letter Dated February 20, 2020, Are Legally**  
20 **Erroneous and Should Be Withdrawn.**

21 Arizona law does not limit bingo to live bingo only. Chapter 6, Title 5,  
22 ARIZ.REV.STAT., regulates bingo games and bingo licensees in Arizona, but it does not  
23 define what bingo is. ARIZ.REV.STAT. § 5-402 makes DOR the licensing authority for  
24 bingo in Arizona, and vests authority in DOR to

25 supervise the administration of this article and adopt, amend and repeal rules  
26 governing the holding, operating and conducting of games of bingo, the

1 rental or purchase of premises and the purchase of equipment and providing  
2 that games of bingo shall be held, operated and conducted only by licensees  
for the purposes and in conformity with the provisions of this article.

3 Exercising such authority, DOR has adopted the following definition of bingo,  
4 which is found in the definitions DOR adopted at A.A.C. § 15-7-201:  
5

6 "Bingo" means a game of chance in which a prize is awarded to a player who  
7 obtains a designated pattern or sequence of numbers or symbols on a card  
8 that are the same as the pattern or sequence of numbers or symbols selected  
at random. When placed in quotation marks, "bingo" means the designated  
9 pattern or sequence of numbers or symbols needed to win a bingo game.

10 The definition contains no requirement that bingo games be "live." What's more,  
11 a Westlaw search of Title 5, ARIZ.REV.STAT., discloses the appearance of the word "live"  
12 in numerous instances, particularly in connection with racing, but never in connection  
13 with bingo. The Legislature's use of "live" elsewhere in Title 5 establishes that it knew  
14 what it was doing and when it wanted a regulated activity to be live and when it did not.  
15 If the Legislature wanted to limit bingo games to "live" games, it would have said so, as  
16 it did in so many other instances in Title 5. Its choice not to do so evinces an intent that  
17 no such requirement be applied to bingo.

18 Similarly, a Westlaw search of Title 15 of the Arizona Administrative Code  
19 discloses that DOR has not construed any Arizona statutes or exercised its authority in  
20 any other way to establish a requirement that bingo games in Arizona be conducted "live."

21 Because neither Arizona law nor DOR regulations require bingo games to be  
22 conducted live only, DOR has no authority to limit the use of BTAs to live games only.  
23 SB 1180 first authorized the use of BTAs in Arizona in connection with bingo games,  
24 and it contains no such restriction or requirement. Due to the Governor's embargo on the  
25 adoption of new regulations by Arizona agencies, DOR has issued no rules so limiting  
26

1 the use of BTAs in Arizona, and Title 15 of the Administrative Code is devoid of any  
2 references to BTAs or "live" bingo at all.

3 Last, neither Arizona law nor DOR regulations define a BTA to be in the form of  
4 a tablet-minder. This is an accretion to the statutes and regulations added by the author  
5 of the February 20 letter with no legal authority to do so.

6 Thus, this is a classic case of DOR trying to create a requirement by a letter that  
7 neither the Legislature nor DOR itself has ever authorized or created. This is exactly the  
8 sort of practice the Small Business Bill of Rights was intended to preclude. DOR  
9 accordingly should forthwith rescind the letter it issued to licensees on February 20, 2020.

10

11 **5. Relief Requested.**

12

13 Lynxx therefore respectfully requests that DOR give this petition due  
14 consideration, take action on it within 60 days of submission as required by  
15 ARIZ.REV.STAT. § 41-1033(C), abandon the practice or *de facto* rule of summarily  
16 rejecting applications from entities that have expressed an intent to use the Lynxx BTAs  
17 in conducting bingo games, and withdraw the letter it issued on February 20, 2020, as  
18 improvident and without foundation in law or regulations.

19

**DATED** on March 10, 2020.

20

**CANTELME & BROWN, P.L.C.**

21

22

23

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25

26



David J. Cantelme, Bar No. 006313  
2020 S. McClintock Drive, Suite 109  
Tempe, Arizona 85282 *Attorneys for*  
*Appellant*

# **EXHIBIT 4**

# STATE OF ARIZONA

Department of Revenue



Douglas A. Ducey  
Governor

Carlton Woodruff  
Director

February 20<sup>th</sup>, 2020

Dear Licensee:

It has come to the Arizona Department of Revenue's ("Department") attention that many of its bingo licensees have been approached by vendors regarding the potential use of electronic bingo gaming devices (sometimes referred to as "bingo technological aids" or "BTAs") in their establishments. The Department is taking this opportunity to remind bingo licensees that they are licensed **to conduct live bingo games only**. While "technological aids for bingo games **that function only as electronic substitutes for bingo cards**" (e.g. tablet-style card minders) may be used **in conjunction with** live bingo games, Arizona law **does not allow** for the use of electronic gaming devices (e.g. slot-machines) by bingo licensees.

For helpful information on this subject, please see a courtesy notice from the Arizona Department of Gaming that we have provided on our website at:

<https://azdor.gov/sites/default/files/ElectronicBingoNotice.pdf>.

Thank you for the opportunity to serve you. Please contact us at [Bingo@azdor.gov](mailto:Bingo@azdor.gov) or (602) 716-7801 with any questions or concerns.

Sincerely,

Arizona Department of Revenue  
Bingo Department- Division Code 22  
Education and Compliance Division

# **EXHIBIT 5**

# Notice to Bingo Licensees re SB1180

To: Bingo Licensees, Contractors and Equipment Companies

From: Arizona Department of Gaming

Date: August 9, 2017

Subject: Bingo Gambling Devices and Senate Bill 1180

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Persons licensed by the Arizona Department of Revenue can legally operate bingo games with certain regulations on the manner of play. A.R.S. §§ 5-401 *et seq.* However, it is against the law (and a class 2 misdemeanor) to possess a bingo gambling device. A.R.S. § 13-3306(D).

Effective August 12, 2017, A.R.S. § 5-406 will be amended by Senate Bill 1180. The bill requires that bingo licensees offer assistance to players with disabilities as part of which licensees may employ “technological aids for bingo games that function only as electronic substitutes for bingo cards.” The bill allows licensees to rent, rather than own, these technological aids. Finally, the bill allows contractors to be involved in conducting certain licensee’s bingo games and, in particular, assist with the operation of the substitute bingo cards.

***Senate bill 1180 does not legalize bingo gambling devices.*** There is concern that bingo licensees and third persons might misinterpret SB1180, and in particular the language on technologic aids, as a change that permits the operation of electronic bingo machines. ***Possession of a bingo gambling device remains a crime. If you have any question about whether the technologic aid you are considering properly qualifies as an electronic substitute for***

***a bingo card, please contact the Arizona Department of Gaming for further guidance. Note that providers of bingo devices may not themselves understand the impact of SB1180.***

Licensees must operate bingo in the manner Arizona law requires. “Bingo” in Arizona is a multi-player game where balls or other objects marked with numbers or symbols are drawn from a receptacle, the results called out to players, and winners determined by obtaining a designated pattern or sequence of the drawn numbers or symbols on a card. A.A.C. R-15-7-201 and 207-213. Legal games of bingo must take place at a licensee’s single location with all players, the licensee’s supervisor, the bingo equipment, the person drawing numbers and the person calling numbers physically present on the premises where the game is actually conducted. A.R.S. §§ 5-401(23), 403.01, 404(F), 405(A)(4) and (B) and 406(R), (S) and (V). The games must use equipment (to include the marked objects in the receptacle) owned by the licensee. A.R.S. §§ 5-401(7) and 406(E) and (R). Bingo cards (devices of play provided by a licensee to a player before the start of the game that bear parallel rows of spaces containing numbers or symbols) must be sold on the premises where the game is played. A.A.C. R15-7-201 and 215 (A). All bingo winners must be verified by a bingo worker in the presence of a disinterested player. A.A.C. R15-7-213(A). At the time a winner is announced, any player shall be entitled to call for a verification, to take place in the immediate presence of the supervisor and in full view of the player, of numbers drawn and balls or objects remaining in the receptacle. A.R.S. § 406(U).

SB 1180 does reference the use of technological aids for bingo games, but ***only*** those that function as electronic substitutes for bingo cards. The bill does not otherwise change the required manner in which licensees can legally operate bingo. The allowed technologic aids thus can be nothing more than replacements for paper bingo cards in the context of bingo games otherwise operated in compliance with the cited

Arizona statutes and regulations. Bingo gambling devices and other technologic aids that replicate the on-site, physical game of bingo rather than just replace bingo cards in a live game, no matter what they are called and including those that contain or share random number generators or are linked to players or bingo games in other locations, do not and cannot meet all of the above described requirements of Arizona law.

As common sense suggests, technologic aids that function only as substitutes for bingo cards can only replace bingo cards. Electronic player stations cannot be used singly or as part of a network to replace the entire bingo game. That game must still be operated as required by Arizona law.

In conclusion, SB 1180 does not permit the operation of bingo gambling devices. The only technological devices it permits are electronic devices that take the place of paper bingo cards and are used in a licensee's real-time, on-site, multi-player bingo games in which balls are drawn, numbers are called and physically present players mark their own card(s) in search of a winning pattern. ***By imposing disability access requirements, and permitting the use of electronic substitutes for bingo cards that permit players with disabilities to participate alongside those who can use paper cards, SB 1180 does not make otherwise impermissible electronic bingo gambling devices permissible in this state.***

# **EXHIBIT 6**

STATE OF ARIZONA

Department of Revenue



Douglas A. [unclear]  
Governor

Carlton W. [unclear]  
Director

Live Bingo License Renewal Questionnaire

Dear Taxpayer:

Please complete this questionnaire and return it along with your renewal application and check

1. What are your live bingo games hours of operation?  
\_\_\_\_\_

2. Is the person drawing and calling the numbers PHYSICALLY on the premises when your live bingo games are being conducted?

Yes       No

3. Does a secondary supervisor verify your live bingo game numbers?

Yes       No

4. Who is your live bingo supplier? (For all bingo supplies.)  
\_\_\_\_\_

5. Do you foresee purchasing/renting machines as "technological aids for your live bingo games?"

Yes       No

If so, do you already have a supplier in mind?

Yes       No

Please contact the Specialty Tax Programs team at [Bingo@azdor.gov](mailto:Bingo@azdor.gov) or (602) [unclear] or concerns.

Thank You,

Arizona Department of Revenue  
Bingo Department- Division Code 22  
Education & Compliance Division

Please fill out ques  
also fill  
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with invo  
supp  
Thank

**Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.**

Court of Appeals of Arizona, Division One

May 5, 2015, Filed

No. 1 CA-CV 14-0083

**Reporter**

237 Ariz. 246 \*; 349 P.3d 220 \*\*; 2015 Ariz. App. LEXIS 55 \*\*\*; 712 Ariz. Adv. Rep. 12

ARIZONA STATE UNIVERSITY ex rel. ARIZONA BOARD OF REGENTS, a body corporate, Plaintiff/Appellant, v. ARIZONA STATE RETIREMENT SYSTEM, a body corporate, Defendant/Appellee.

**Subsequent History:** Review denied by [ASU ex rel. Az Bd. of Regents v. ASRS, 2015 Ariz. LEXIS 338 \(Ariz., Oct. 27, 2015\)](#)

Decision reached on appeal by, Remanded by [Ariz. State Univ. Bd. of Regents v. Ariz. State Ret. Sys., 2017 Ariz. App. LEXIS 93 \(Ariz. Ct. App., May 11, 2017\)](#)

**Prior History:** [\*\*\*1] Appeal from the Superior Court in Maricopa County. No. LC2012-000689-001. The Honorable Crane McClennen, Judge.

**Disposition:** REVERSED AND REMANDED.

## Core Terms

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unfunded, actuarial, retirement, calculating, termination, incentive program, rulemaking, benefits, elections, argues, exempt, assumptions, session, actuarial assumptions, superior court, implemented, generally applicable, fiduciary duty, contributions, reimbursement, methodology, agencies, rates

## Case Summary

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### Overview

ISSUE: Whether the Arizona State Retirement System was required to follow the rule-making procedure of the Arizona Administrative Procedure Act (APA) before enforcing a policy under which it charged a university for an

actuarial unfunded liability reportedly arising when its employees retired. HOLDINGS: [1]-The superior court erred in affirming the ruling of the System's board that the university failed to show that the System's methodology for calculating unfunded liability resulting from a termination incentive program was unreasonable, an abuse of discretion, or contrary to law because the System's policy was invalid, and the System was not entitled to charge the university for the retirements; [3]-The policy was a rule under the APA, [Ariz. Rev. Stat. § 41-1001\(19\)](#) (Supp. 2014), and the System adopted it without substantial compliance with the rule-making procedure of the APA.

### Outcome

Decision reversed.

## LexisNexis® Headnotes

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Pensions & Benefits Law > Governmental Employees > State Pensions

### [HN1](#) Governmental Employees, State Pensions

The Arizona State Retirement System administers a trust fund which provides retirement and disability benefits in the form of periodic, or lump sum, pension payments to eligible employees of the state and participating political subdivision employers. [Ariz. Rev. Stat. §§ 38-711\(13\)](#), [38-712](#), [38-727](#), [38-729](#), [38-757](#), [38-758](#), [38-760](#), [38-762 to 38-764](#) (2015). The employees, known as "members," may also elect to receive one of several health insurance supplemental benefits. [Ariz. Rev. Stat. §§ 38-711\(23\)](#), [38-783](#) (2015). Member and employer contributions fund the trust, along with interest on fund assets and investment returns. [Ariz. Rev. Stat. §§ 38-718](#), [38-735 to 38-737](#) (2015). To monitor the trust's financial health, the System compares the assets it has accumulated to pay for members' earned benefits with the liabilities it owes for those benefits. [Ariz. Rev. Stat. § 38-737\(A\)](#) (2015). When liabilities owed for past service exceed assets accumulated to pay those liabilities, an unfunded actuarial accrued liability exists.

Pensions & Benefits Law > Governmental Employees > State Pensions

### [HN2](#) Governmental Employees, State Pensions

Each year, the Arizona State Retirement System's actuary determines the contribution rates necessary to fund the System's present and future obligations to its members plus payments on any amortized unfunded actuarial accrued liability. [Ariz. Rev. Stat. §§ 38-736](#), [38-737](#). In determining the contribution rates, the actuary relies on assumptions about members' expected benefit elections, payroll growth, retirement rates, mortality rates, interest rates, and investment returns. The System conducts empirical studies every five years to improve its assumptions. [Ariz. Rev. Stat. § 38-714\(G\)](#) (2015). The System may incur an actuarial unfunded liability when an employer offers incentives to encourage its employee-members to retire. For example, when an employer increases a member's salary beyond System expectations in exchange for a promise to retire, that member's monthly pension, calculated using the increased salary, [Ariz. Rev. Stat. § 38-711\(5\)\(a\)\(ii\)\(b\)](#), [38-757 to 38-759](#) (2015), may likely exceed the

amount the System expected to pay out to that member, thus resulting in an unfunded liability. A termination incentive program may also result in an unfunded liability by causing members to retire and collect benefits sooner and for longer than the System expected.

Pensions & Benefits Law > Governmental Employees > State Pensions

### [HN3](#) **Governmental Employees, State Pensions**

See [Ariz. Rev. Stat. § 38-749](#).

Administrative Law > Agency Rulemaking > State Proceedings

### [HN4](#) **Agency Rulemaking, State Proceedings**

The Arizona Administrative Procedure Act defines "rule" as: an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intra-agency memoranda that are not delegation agreements. [Ariz. Rev. Stat. § 41-1001\(19\)](#) (Supp. 2014).

Governments > Legislation > Interpretation

### [HN5](#) **Legislation, Interpretation**

The ordinary meaning of the word "implement" is to put into practical effect; carry out. A court may refer to established and widely used dictionaries to determine ordinary meaning of word.

Pensions & Benefits Law > Governmental Employees > State Pensions

### [HN6](#) **Governmental Employees, State Pensions**

[Ariz. Rev. Stat. § 38-749](#) (2015) does not set forth the calculations to be made and leaves much to the Arizona State Retirement System's discretion.

Administrative Law > Agency Rulemaking > State Proceedings

### [HN7](#) **Agency Rulemaking, State Proceedings**

The rule-making procedure of the Arizona Administrative Procedure Act applies to all agencies and all proceedings not expressly exempted. [Ariz. Rev. Stat. § 41-1002\(A\)](#) (2013)

Governments > Legislation > Interpretation

### [HN8](#) **Legislation, Interpretation**

When the Legislature's intent is clear interpretative canons of construction are inapplicable.

Administrative Law > Agency Rulemaking > State Proceedings

Governments > Legislation > Interpretation

### [HN9](#) **Agency Rulemaking, State Proceedings**

The Arizona Administrative Procedure Act (APA), [Ariz. Rev. Stat. § 41-1002](#) (2013), provides that in the absence of an express exemption, agencies must comply with the APA, and the courts cannot ignore this unambiguous language in favor of a secondary principle of statutory interpretation. Expressio unius should not be applied to contradict general context of statute and public policy of the State.

Governments > Legislation > Interpretation

### [HN10](#) **Legislation, Interpretation**

The doctrine of 'expressio unius' is not to be applied where its application contradicts the general meaning of the statute or state public policy.

Pensions & Benefits Law > Governmental Employees > State Pensions

### [HN11](#) **Governmental Employees, State Pensions**

See [Ariz. Const. art. XXIX, § 1\(A\)](#).

Administrative Law > Agency Rulemaking > State Proceedings

### [HN12](#) **Agency Rulemaking, State Proceedings**

The Arizona Administrative Procedure Act (APA) requires an agency to provide meaningful opportunity for public comment on and discussion of proposed rules. [Ariz. Rev. Stat. § 41-1023\(B\)](#), [\(C\)](#) (2013). The APA does not, however, require an agency to blindly heed any and every suggestion it receives. Rather, the APA merely requires an agency to "consider" public comments before making a rule, [Ariz. Rev. Stat. § 41-1024\(C\)](#) (2013), and the agency remains free to use its own experience, technical competence, specialized knowledge and judgment in the making of a rule. [Ariz. Rev. Stat. § 41-1024\(D\)](#) (2013).

Administrative Law > Agency Rulemaking > General Overview

### [HN13](#) **Administrative Law, Agency Rulemaking**

As defined by the Arizona Administrative Procedure Act (APA), "agency" means any board, commission, department, officer or other administrative unit of the State. [Ariz. Rev. Stat. § 41-1001\(1\)](#) (2013). The APA's definition of "agency" makes no exception for agencies that perform fiduciary as opposed to more traditional regulatory functions.

Administrative Law > Separation of Powers > Legislative Controls > Explicit Delegation of Authority

Pensions & Benefits Law > Governmental Employees > State Pensions

#### [HN14](#) **Legislative Controls, Explicit Delegation of Authority**

Consistent with the Arizona State Retirement System's status as an agency subject to the Arizona Administrative Procedure Act, the Legislature specifically granted the System authority to adopt, amend or repeal rules for the administration of the plan" and "this article," a reference to the statutory article that includes [Ariz. Rev. Stat. § 38-749](#) (2015). [Ariz. Rev. Stat. § 38-714\(E\)\(4\)](#) (2015).

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > General Overview

Administrative Law > Agency Rulemaking > State Proceedings

#### [HN15](#) **Agency Rulemaking, Rule Application & Interpretation**

The definition of "agency," however, makes no exception for agencies whose decisions affect the rights of divisions and political subdivisions of the state. Arizona Administrative Procedure Act (APA), [Ariz. Rev. Stat. § 41-1001\(1\)](#) (2013). Accordingly, rules promulgated without following the rule-making procedure of the APA are unenforceable against political subdivisions of the State.

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > Validity

#### [HN16](#) **Rule Application & Interpretation, Validity**

See the Arizona Administrative Procedure Act, [Ariz. Rev. Stat. § 41-1030\(A\)](#) (2013 & Supp. 2014).

**Counsel:** For Plaintiff/Appellant: Thomas L. Hudson, Eric M. Fraser, Osborn Maledon P.A., Phoenix.

For Plaintiff/Appellant: Lisa K. Hudson, Office of General Counsel, Arizona State University, Tempe.

For Defendant/Appellee: Jothi Beljan, Arizona Attorney General's Office, Phoenix.

**Judges:** Judge Patricia K. Norris delivered the opinion of the Court, in which Presiding Judge Margaret H. Downie and Judge Randall M. Howe joined.

**Opinion by:** Patricia K. Norris

## Opinion

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[\*247] [\*\*221] **NORRIS**, Judge:

P1 The dispositive question in this appeal is whether Defendant/Appellee, the Arizona State Retirement System, was required to follow the rulemaking procedure set forth in Arizona's Administrative Procedure Act before enforcing a policy under which it charged Plaintiff/Appellant, Arizona State University, for an actuarial unfunded liability reportedly arising when 17 University employees retired. We hold that it was, and because the System failed to follow the rulemaking [\*\*222] [\*248] procedure, the policy is invalid. Accordingly, we reverse and remand to the superior court for entry of an order directing the System to refund the improper [\*\*\*2] charge, with interest thereon if and as authorized by law.

### FACTS AND PROCEDURAL BACKGROUND

P2 [HN1](#)<sup>(↑)</sup> The System administers a trust fund which provides retirement and disability benefits in the form of periodic, or lump sum, pension payments to eligible employees of the state and participating political subdivision employers. [Ariz. Rev. Stat. \("A.R.S."\) §§ 38-711\(13\), -712, -727, -729, -757, -758, -760, -762 to -764](#) (2015).<sup>1</sup> The employees, known as "members," may also elect to receive one of several health insurance supplemental benefits. [A.R.S. §§ 38-711\(23\), -783](#) (2015). Member and employer contributions fund the trust, along with interest on fund assets and investment returns. [A.R.S. §§ 38-718, -735 to -737](#) (2015). To monitor the trust's financial health, the System compares the assets it has accumulated to pay for members' earned benefits with the liabilities it owes for those benefits. See [A.R.S. § 38-737\(A\)](#). When liabilities owed for past service exceed assets accumulated to pay those liabilities, an unfunded actuarial accrued liability exists.

P3 [HN2](#)<sup>(↑)</sup> Each year, the System's actuary determines the contribution rates necessary to fund the System's present and future obligations to its members plus payments on any amortized unfunded actuarial accrued liability. [A.R.S. §§ 38-736, -737](#). In determining the contribution rates, the actuary relies on assumptions about members' expected benefit elections, payroll growth, retirement rates, mortality rates, interest rates, and investment returns. The System conducts empirical studies every five years to improve its assumptions. See [A.R.S. § 38-714\(G\)](#) (2015).

P4 The System may incur an actuarial unfunded liability when an employer offers incentives to encourage its employee-members to retire. For example, when an employer increases a member's salary beyond System expectations in exchange for a promise to retire, that member's monthly pension, calculated using the increased salary, see [A.R.S. § 38-711\(5\)\(a\)\(ii\)\(b\), -757 to -759](#) (2015), may likely exceed the amount the System expected to pay out to that member, thus resulting in an unfunded liability.<sup>2</sup> A termination incentive program may also result in an unfunded liability by causing members to retire and collect benefits sooner and for longer than the System expected.

P5 To address the financial impact of termination incentive programs, see Amended Senate Fact Sheet, H.B. 2052, 46 Leg., 2d Reg. Sess. (March 11, 2004), in 2004 the Legislature enacted [A.R.S. § 38-749](#) (2015). 2004 Ariz. Sess. Laws, ch. 106, § 1 (2d Reg. Sess.). Under this statute, "[i]f a termination incentive program that is offered by an employer results in an actuarial unfunded liability" to the System, the employer must pay the System "the amount of

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<sup>1</sup> Although the Arizona Legislature amended certain statutes cited in this opinion after the events giving rise to the dispute between the parties, these revisions are immaterial to our resolution of this appeal. Thus, we refer to the current version of these and all other statutes cited in this [\*\*\*3] opinion.

<sup>2</sup> Like the parties, their witnesses, and [A.R.S. § 38-749](#) (2015), [\*\*\*4] we use the term "actuarial unfunded liability" interchangeably with "unfunded liability."

the unfunded liability." [A.R.S. § 38-749\(A\)](#). The statute directs the System to "determine the amount of the unfunded liability in consultation with its actuary." *Id.*<sup>3</sup>

**[\*\*223] [\*249]** P6 Although [A.R.S. § 38-749](#) refers to an "actuarial unfunded liability," the statute does not explain how to determine when a termination incentive program results in an actuarial unfunded liability or how to calculate "the amount of the unfunded liability." To answer these questions, the System's executive staff discussed the statute with the System's actuary. They considered two methods of calculating the unfunded liability, one which would discount the charge to employers by the amount of additional benefits a member would have received if he or she had continued working instead of retiring and one which would not provide employers with this discount. As a result of these discussions, the System's executive staff adopted the first method and directed the System's actuary to draft the System's "Policy on Employer Early Termination Incentive Programs" to memorialize how the System would implement [A.R.S. § 38-749](#).

P7 The Policy requires employers to notify the System of all members who participate in a termination incentive program and to disclose their demographic and salary information, as well as their **[\*\*\*7]** benefits elections. Using this information, the System's actuary calculates the present value, under System actuarial assumptions, of the member's future benefits as if he or she had not retired ("active liability") and the present value, under System actuarial assumptions, of the member's future benefits taking into account his or her actual retirement date and actual benefit elections ("retired liability").

P8 Under the Policy, when retired liability exceeds active liability, an unfunded liability results from the member's participation in the termination incentive program, and the employer is liable for the difference. When, however, a member's active liability exceeds his or her retired liability, the employer will receive credit. If credits exceed liabilities, the employer does not receive reimbursement; there is merely no charge. The System has applied the Policy consistently to all System employers.

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<sup>3</sup> [A.R.S. § 38-749](#), in full, provides:

**HN3**  A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to [the System], the employer shall pay to [the System] the amount of the unfunded liability. [The System] shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify [the System] if the employer plans to implement a termination incentive program that may affect [System] funding.

C. If [the System] determines that an employer has implemented **[\*\*\*5]** a termination incentive program that results in an actuarial unfunded liability to [the System], [the System] shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by [the System] of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued **[\*\*\*6]** vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

P9 In 2011, the University offered one year's salary as an incentive payment to eligible employees if they agreed to retire that year. Seventeen System members accepted the University's offer.<sup>4</sup> Applying the Policy, the System determined the University's termination incentive program [\*\*\*8] resulted in an unfunded liability of \$1,149,103, which it then charged to the University. The University paid the charge, but appealed it, arguing the System had, first, adopted a rule without following the rulemaking procedure provided by Arizona's Administrative Procedure Act ("APA"), codified at [A.R.S. §§ 41-1001 to -1092](#) (2013 & Supp. 2014); and, second, charged the University for retirements that did not result in an actuarial unfunded liability.

P10 At a hearing before the Office of Administrative Hearings, the University's actuarial expert and the System's actuary agreed that "actuarial standards of practice are not detailed enough to give us specific direction about how to interpret a term like unfunded liability." The University's expert offered an alternative method of calculating actuarial unfunded liability, consistent, in her opinion, with generally accepted actuarial standards, the System's actuarial assumptions, and [A.R.S. § 38-749](#). Based on that method, she testified the University's termination [\*\*224] [\*250] incentive program did not result in any unfunded liability because it did not cause more [\*\*\*9] members to retire than the System had projected based on its assumptions.

P11 The University's expert also testified the System should not charge employers for unfunded liability resulting from members' benefits elections because whether a member elects the benefit option predicted by the System's assumptions or a more expensive option has nothing to do with that member's participation in a termination incentive program. She pointed out the System charged the University for one member's health benefit election, even though, under System assumptions, the member had a 100% chance of retiring that year; and, thus, his retirement was not the result of a termination incentive program.

P12 The System's actuary and the System's Assistant Director of External Affairs also acknowledged that [A.R.S. § 38-749](#) does not explain how to determine whether a termination incentive program results in an actuarial unfunded liability or how to calculate that unfunded liability. The System's actuary testified that the other method of calculating unfunded liability he had discussed with executive staff before they adopted the Policy, see *supra* ¶ 6, is consistent with [A.R.S. § 38-749](#), the System's actuarial assumptions, and generally accepted [\*\*\*10] actuarial standards. He explained the System had, however, "interpreted" the term "unfunded liability" in the manner reflected in the Policy because it was "less onerous for employers."

P13 The administrative law judge ruled in favor of the System, finding the University had failed to show the System's "methodology for calculating unfunded liability resulting from a[] . . . termination incentive program . . . [was] unreasonable, or an abuse of discretion, or contrary to law." The administrative law judge also found that because [A.R.S. § 38-749](#) did not require the System to adopt a rule before implementing the Policy, it was not required to do so. The System's board accepted the administrative law judge's findings of fact and conclusions of law with immaterial alterations, and the University filed an action for judicial review in the superior court. See [A.R.S. § 12-905](#) (2003). The superior court upheld the board's determination, and this appeal followed.

## DISCUSSION

### I. The Policy is a Rule

P14 On appeal, the University argues the Policy is a rule within the meaning of the APA and, therefore, because the System adopted it without following the rulemaking procedure provided in the APA, it is void. Reviewing this issue [\*\*\*11] *de novo*, but granting deference to the System's interpretation of statutes and its own regulations, see

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<sup>4</sup>This incentive payment was not compensation for the purpose of calculating the members' retirement benefits. See *generally* [A.R.S. § 38-711\(5\)\(a\)\(ii\)\(b\), -757 to -759](#).

[Carondelet Health Servs., Inc. v. Ariz. Health Care Cost Containment Sys. Admin.](#), 182 Ariz. 221, 226, 895 P.2d 133, 138 (App. 1994), we agree with the University.<sup>5</sup>

P15 [HN4](#) [↑] The APA defines "rule" as:

an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

[A.R.S. § 41-1001\(19\)](#) (Supp. 2014).

P16 Thus, barring any exemptions, an agency statement is a rule, subject to the APA's rulemaking procedure, if it, first, is generally applicable, and, second, implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. At the administrative hearing, the System acknowledged it had applied the Policy consistently to all [\*\*\*12] System employers since its adoption, and, thus, the Policy satisfies the general applicability requirement. See [Carondelet](#), 182 Ariz. at 227, 895 P.2d at 139 (agency admission that "its methodology is generally applied to all hospitals" satisfies general applicability element).

[\*\*225] [\*251] P17 The Policy also satisfies the second requirement. As discussed, the System adopted the Policy to implement [A.R.S. § 38-749](#). [HNS](#) [↑] The ordinary meaning of the word "implement" is "[t]o put into practical effect; carry out." American Heritage Dictionary 880 (4th ed. 2006); see [Stout v. Taylor](#), 233 Ariz. 275, 278, ¶ 12, 311 P.3d 1088, 1091 (App. 2013) (court may refer to established and widely used dictionaries to determine ordinary meaning of word). By charging employers under the Policy for an unfunded liability which results from termination incentive programs, the System has put [A.R.S. § 38-749](#) into practical effect. See [A.R.S. § 41-1001\(19\)](#); [Carondelet](#), 182 Ariz. at 227, 895 P.2d at 139 (agency methodology was a rule because, among other reasons, it implemented a session law).

P18 Further, the Policy interprets [A.R.S. § 38-749](#). The plain language of the statute leaves open questions such as: how to determine if a termination incentive program "results in an actuarial unfunded liability"; how to calculate the amount of an unfunded liability; and whether to charge employers if members elect more expensive benefit options than the System assumed, [\*\*\*13] even though these elections may not, strictly speaking, be the result of a termination incentive program. Cf. [Sw. Ambulance, Inc. v. Ariz. Dep't of Health Servs.](#), 183 Ariz. 258, 261, 902 P.2d 1362, 1365 (App. 1995), superseded by statute, 1998 Ariz. Sess. Laws, ch. 57, § 39 (2d Reg. Sess.) (ambulance services rate schedules were rules because they specified "how a fraction of an hour is to be charged, how mileage is to be charged, the assessment of charges for the transport of multiple patients, what constitutes a minimum charge, [and] when the rate for advanced life support may be charged").

P19 Like the hospital reimbursement methodology at issue in [Carondelet](#), the Policy involves a "complex calculation with subjective components whose inclusion, or even definition, have a significant effect" on the amount the System charges employers. See 182 Ariz. at 227, 895 P.2d at 139. And, like the session law at issue in [Carondelet](#), [HNG](#) [↑] the governing statute here, [A.R.S. § 38-749](#), "does not set forth the calculations to be made and leaves much" to the System's discretion. See [id. at 227-28, 895 P.2d at 139-40](#). [Carondelet](#) involved a session law which directed the Arizona Health Care Cost Containment System ("AHCCCS") to adjust its hospital reimbursement multipliers based on new six-month charges and volume reports. [id. at 224, 895 P.2d at 136](#). We held the methodology AHCCCS adopted to implement the session [\*\*\*14] law was a rule because, among other reasons, the session law did "not set forth the calculations to be made" and did not direct "how the amount of reimbursement [was to] be determined." [id. at 228, 895 P.2d at 140](#). Similarly, [A.R.S. § 38-749](#) directs the System to make a calculation, but it does not specify how the calculation is to be made. In other words, to implement [A.R.S. § 38-749](#), one must first interpret it.

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<sup>5</sup>The University also argues the System's method of determining whether a termination incentive program "results" in actuarial unfunded liability and calculating the amount of that liability is contrary to law and arbitrary and capricious. Given our resolution of the rulemaking issue, we do not need to address this argument.

P20 Despite the foregoing, the System contends the Policy does not implement or interpret [A.R.S. § 38-749](#), arguing the statute is self-executing and leaves no room for agency discretion. According to the System, unlike the challenged policies in [Carondelet](#) and [Southwest Ambulance](#), the Policy here does not involve "subjective" judgments and merely applies "the same actuarial assumptions used to operate the entire defined-benefit plan and the same calculation used to calculate the plan's liability."

P21 The evidence presented at the administrative hearing squarely contradicts this position. As discussed, the System's actuary and Assistant Director of External Affairs both conceded [A.R.S. § 38-749](#) does not explain how the amount of an unfunded liability should be calculated. Both the University's actuarial expert and the System's actuary offered alternative methods [\*\*\*15] of calculating the amount of an unfunded liability that they testified were consistent with [A.R.S. § 38-749](#), the System's actuarial assumptions, and generally applicable actuarial standards of practice. In fact, the System's actuary testified the System considered two methods of making the calculation, and it selected the calculation that appears in the Policy not because it was more consistent with [A.R.S. § 38-749](#) or the System's actuarial assumptions, but because it was "less onerous for employers." Thus, to carry out its mandate [\*\*226] [\*252] under [A.R.S. § 38-749](#), the System was required to exercise judgment and discretion in crafting the Policy, and it, in fact, did so. See [Carondelet, 182 Ariz. at 228-29, 895 P.2d at 140-41](#) (session law not self-executing because it left matters to agency's discretion and did not direct any one particular course of action).

P22 Accordingly, the Policy was a rule within the meaning of the APA.

II. In the Absence of an Exemption, an Agency Must Comply with the APA

P23 The System argues that even if the Policy is a rule, it was not required to comply with the APA because the Legislature did not expressly require rulemaking in [A.R.S. § 38-749](#). Although we agree [A.R.S. § 38-749](#) says nothing about rulemaking, the statute's silence does not exempt the System from the APA's rulemaking procedure. [\*\*\*16]

P24 [HN7](#) [↑] The rulemaking procedure of the APA "appl[ies] to all agencies and all proceedings not expressly exempted." [A.R.S. § 41-1002\(A\)](#) (2013); see [Carondelet, 182 Ariz. at 228, 895 P.2d at 140](#) (rejecting argument that from legislative silence one can infer "the legislature never envisioned the need for an explanatory rule"). Neither [A.R.S. § 38-749](#) nor the APA, see [A.R.S. § 41-1005](#) (Supp. 2014), exempt the System from rulemaking; therefore, rulemaking is required before the Policy can be given effect. See [A.R.S. § 41-1030\(A\)](#) (2013)

P25 The System contends [Carondelet](#) does not support the proposition that rulemaking is required when the Legislature is silent on the question. The System attempts to distinguish [Carondelet](#) by arguing that the policy at issue in that case implemented a session law which incorporated by reference a prior statute which expressly called for rulemaking. [182 Ariz. at 228, 895 P.2d at 140](#). The [Carondelet](#) court, however, merely used this fact to "bolster[]" its conclusion after it had resolved the issue under [A.R.S. § 41-1002\(A\)](#). *Id.*

P26 Invoking the principle of *expressio unius est exclusio alterius*—a canon of statutory construction that when statutes set forth a requirement in one provision but not in another, a court should assume the absence of the provision was intentional—the System further argues the Legislature intended to exempt [\*\*\*17] it from rulemaking because it expressly required the System to engage in rulemaking in other statutes, [A.R.S. §§ 38-735, 755, 764](#) (2015). See generally [Ezell v. Quon, 224 Ariz. 532, 541, ¶ 41, 233 P.3d 645, 654 \(App. 2010\)](#) (discussing this canon of construction)

P27 [HN8](#) [↑] When the Legislature's intent is clear, however, interpretative canons of construction are inapplicable. [Section 41-1002 HN9](#) [↑] provides that in the absence of an express exemption, agencies must comply with the APA, and we cannot ignore this unambiguous language in favor of a secondary principle of statutory interpretation. See [Forsythe v. Paschal, 34 Ariz. 380, 383, 271 P. 865, 866 \(1928\)](#) (*expressio unius* should not be applied to contradict "general context" of statute and "public policy of the state"); [Microchip Tech. Inc. v. State, 230 Ariz. 303, 306-07, ¶ 12, 283 P.3d 34, 37-38 \(App. 2012\)](#) (because text of statute was clear, resort to principle of *expressio unius* was unnecessary (citing [Sw. Iron & Steel Indus., Inc. v. State, 123 Ariz. 78, 79-80, 597 P.2d 981, 982-83](#)

(1979) (HN10<sup>↑</sup>) "The doctrine of 'expressio unius' is not to be applied where its application contradicts the general meaning of the statute or state public policy."))).

### III. Compliance with the APA Would Not Require the System to Breach its Fiduciary Duties

P28 The System also argues that allowing "employer input on unfunded liability calculations" through rulemaking procedure, see [A.R.S. § 41-1023](#) (2013), would require it to breach its fiduciary duty to the trust and its beneficiaries under the Arizona Constitution. See [Ariz. Const. art. XXIX, § 1\(A\)](#) (HN11<sup>↑</sup>) "Public [\*\*\*18] retirement systems shall be funded with contributions and investment earnings using actuarial methods and assumptions that are consistent with generally accepted actuarial standards."). In support of this argument, the System cites two California cases, which, for purposes of this appeal, do little more than establish that a state retirement system's fiduciary and contractual duties to its beneficiaries sometimes trump legislative and municipal priorities. [City of Sacramento v. Pub. Emps. Ret. Sys., 229 Cal. App. 3d 1470, 280 Cal. Rptr. 847, 860-61 \[\\*\\*227\] \[\\*253\] \(Cal. App. 1991\)](#) (retirement system's interpretation of federal labor statutes which tended to increase city's contributions to system did not violate California constitutional provision that system minimize employer contributions because, in part, to do so would require system to favor employers over beneficiaries to whom it owes a fiduciary duty); [Valdes v. Cory, 139 Cal. App. 3d 773, 189 Cal. Rptr. 212, 221-24 \(Cal. App. 1983\)](#) (legislation suspending employer contributions to state retirement system violated beneficiaries' vested contractual rights to retirement benefits). Here, however, we are not faced with a situation in which a legislative enactment conflicts with the System's fiduciary duties to the trust and its beneficiaries; the question is simply whether the System must comply with the APA's rulemaking procedure—a [\*\*\*19] question which is neutral to the interests of the trust and its beneficiaries.

P29 Moreover, merely following rulemaking procedure would not cause the System to breach its fiduciary duties. Cf. [Carondelet, 182 Ariz. at 229, 895 P.2d at 141](#) (rejecting argument that forcing agency to comply with APA would "tie [its] hands" and not allow it to fulfill its statutory mandate). HN12<sup>↑</sup> The APA requires an agency to provide meaningful opportunity for public comment on and discussion of proposed rules. [A.R.S. § 41-1023\(B\), \(C\)](#). The APA does not, however, require an agency to blindly heed any and every suggestion it receives. Rather, the APA merely requires an agency to "consider" public comments before making a rule, [A.R.S. § 41-1024\(C\)](#) (2013), and the agency remains free to "use its own experience, technical competence, specialized knowledge and judgment in the making of a rule." *Id.* at (D).

### IV. The System is an Agency Subject to the APA

P30 The System next argues it is exempt from the APA because it is not a "regulatory state agenc[y]"—in the sense of regulating the general public or any particular industry—and instead it is a state agency that serves a fiduciary function.<sup>6</sup> HN13<sup>↑</sup> As defined by the APA, however, "[a]gency' means any board, commission, department, officer or other administrative unit of this [\*\*\*20] state . . . ." [A.R.S. § 41-1001\(1\)](#). The APA's definition of "agency" makes no exception for agencies that perform fiduciary as opposed to more traditional regulatory functions. Indeed, HN14<sup>↑</sup> consistent with the System's status as an agency subject to the APA, the Legislature specifically granted the System authority to "[a]dopt, amend or repeal rules for the administration of the plan" and "this article"—a reference to the statutory article that includes [A.R.S. § 38-749](#). [A.R.S. § 38-714\(E\)\(4\)](#) (2015).

P31 The System further argues that forcing it to comply with the APA under the circumstances here would be "absurd" because the APA was not intended [\*\*\*21] to protect the rights of "one division of state government," the University, from the actions of another, the System. HN15<sup>↑</sup> The foregoing definition of "agency," however, makes no exception for agencies whose decisions affect the rights of divisions and political subdivisions of the state. See [A.R.S. § 41-1001\(1\)](#). Accordingly, we have held that rules promulgated without following the rulemaking procedure

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<sup>6</sup>Relying on *Canyon Ambulatory Surgery Ctr. v. SCF Ariz.*, the System argues the APA "governs only those agencies that perform governmental functions," [225 Ariz. 414, 419, ¶19, 239 P.3d 733, 738 \(App. 2010\)](#), and, thus, the APA does not apply to the System insofar as it serves a fiduciary function. The statement from *Canyon Ambulatory* the System quotes, however, was a recitation of the ground on which the superior court resolved that case. *Id.* This court declined to affirm on the issue of whether the State Compensation Fund "is a state agency subject to the APA" and instead decided the case on the basis that the policy at issue there was not a rule. [Id. at 419-20, ¶¶ 19, 21, 239 P.3d at 738-39.](#)

of the APA are unenforceable against political subdivisions of the state. See, e.g., [Cochise Cnty. v. Ariz. Health Care Cost Containment Sys.](#), 170 Ariz. 443, 445, 825 P.2d 968, 970 (App. 1991). Furthermore, the System's decision to adopt the Policy affects all System members and all System employers—which, as a factual matter, may include state political subdivisions and their subordinate "entities" in addition to divisions of the state. [A.R.S. § 38-711\(13\)](#).

#### V. The System's Failure to Comply with the APA Renders the Policy Invalid

P32 [HN16](#)<sup>(↑)</sup> "A rule is invalid unless it is made and approved in substantial compliance **[\*\*228]** **[\*254]** with [the APA], unless otherwise provided by law." [A.R.S. § 41-1030\(A\)](#); accord [Sw. Ambulance](#), 183 Ariz. at 262, 902 P.2d at 1366; [Cochise Cnty.](#), 170 Ariz. at 445, 825 P.2d at 970. As discussed, the Policy is a rule, and the System adopted it without "substantial compliance" with the rulemaking procedure of the APA. Accordingly, the Policy is invalid, and the System was not entitled to charge the University for the 17 retirements. See, e.g., **[\*\*\*22]** [Carondelet](#), 182 Ariz. at 229-30, 895 P.2d at 141-42 (agency ordered to compensate hospitals that received reduced reimbursement under policy adopted outside of APA).

### CONCLUSION

P33 For the foregoing reasons, we reverse the superior court's decision affirming the ruling of the System's board and remand to the superior court to enter an order directing the System to refund \$1,149,103 to the University, with interest thereon if and as authorized by law—an issue the superior court should address on remand. Contingent upon its compliance with Arizona Rule of Civil Appellate Procedure 21, we award the University its taxable costs on appeal pursuant to [A.R.S. § 12-341](#) (2003).